TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 115.

Ferdinand F. Fowler, Ex'r
of HARRIET M. ZANE, PETITIONER,

vs.

THE COUNTY OF HAMILTON, ILLINOIS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 10, 1901.
CERTIORARI AND RETURN FILED DECEMBER 10, 1901.

(18,197.)

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(18,197.)

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Transcript of Record.

n the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
OUNTY OF HAMILTON, ILLINOIS, Defendant in Error. } No. 675.

rror to the circuit court of the United States for the southern district of Illinois.

Mr. George A. Sanders, counsel for plaintiff in error.
Mr. J. M. Hamill, Mr. J. R. Williams, counsel for defendant in rror.

Transcript of record filed April 2, 1900.
Printed record filed Apr. 10, 1900.
EDWARD M. HOLLOWAY, *Clerk.*

Pleas.

leas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. William J. Allen, district judge of said district, and in the absence of the Hon. William A. Woods, the Hon. James G. Jenkins, and the Hon. Peter S. Grosscup, judges of the seventh judicial circuit, on Thursday, the twenty-first day of December, at the June term of said —, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth year.

Præcipe for Summons, Nov. 7, 1898.

HARRIET M. ZANE
vs.
THE COUNTY OF HAMILTON. } Assumpsit.

Be it remembered that heretofore to wit, on the 7th day of November in the year of our Lord one thousand eight hundred and inety-eight came Harriet M. Zane a citizen of the State of Massahusetts plaintiff by George A. Sanders Esq., her attorney and filed n office of the clerk of the circuit court of the United States for the outhern district of Illinois her præcipe for summons against The ounty of Hamilton a municipal corporation organized and existing nder and by virtue of the laws of the State of Illinois, defendant, n an action of assumpsit; and thereupon a summons was issued ut of the clerk's office directed to the marshal of said district to xecute which summons and the return of the marshal thereon are s follows to wit:

Summons. Issued Nov. 7, 1898.

Circuit Court of the United States of America, Southern District of Illinois, *ss:*

The United States of America to the marshal of the southern district of Illinois, Greeting:

We command you to summon the County of Hamilton if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto Harriet M. Zane of a plea of assumpsit to her damage as she alleges of twenty thousand dollars; and have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 7th day of November in the year of our Lord one thousand eight hundred and ninety-eight and of our Independence the one hundred and twenty-third year.

[SEAL.] JAMES T. JONES, *Clerk.*

3 *Marshal's Return. Filed Nov.* 7, 1898.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

I have duly served the within summons on the County of Hamilton by reading and delivering a true copy of the same to Frank Lockett, county clerk of Hamilton county, Illinois, at McLeansboro, this 25th day of November, A. D. 1898.

HARLES P. HITCH,
U. S. Marshal,
By E. E. WATTS, *Deputy.*

(Indorsed:) Filed December 7th A. D. 1898. James T. Jones, clerk.

And afterwards to wit on said seventh day of November in the year last aforesaid came again the plaintiff by George A. Sanders Esq. her attorney and filed in the clerk's office of said court her declaration in said case as follows to wit:

Declaration. Filed Nov. 7, 1898.

UNITED STATES OF AMERICA:

In the United States Circuit Court, Southern District of Illinois, at the January Term, A. D. 1899.

HARRIET M. ZANE, Plaintiff, *vs.* THE COUNTY OF HAMILTON, ILLS., Defendant.	Assumpsit. Damages, $20,000.

Declaration.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of The County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the southern district of Illinois, defendant in this suit, who
4 has been summoned etc., to answer the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county-seat of Hamilton county, in the district aforesaid, at the court-house in McLeansboro, made, executed and delivered by S. B. Stelle, then county judge of Hamilton county, Illinois, and J. W. Marshall then clerk of the county court of said county, among others its six (6) county bonds, numbered 45–46–47–48–49 and 50, commonly called railroad aid bonds, for $1000 each, bearing interest at the rate of seven per cent. per annum evidenced by coupon interest notes of $35.00 each, due and payable on the 1st days of January and July, of each year.

That said bonds were dated Oct. 23 1871 and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of Jan'y and July, of each year, where the State treasurer of the State of Illinois pays the interest and debts of said State, in the city of New York.

That said bonds were registered by the auditor of the State of Illinois, Nov. 1, 1871, and with coupons attached evidencing the interest attached, so made, executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That bond No. 46, issued with the other five bonds named as aforesaid, being in the words and figures following to wit:

No. 46. UNITED STATES OF AMERICA, $1,000.

Bond of Hamilton County.

Interest seven per cent., Payable semi-annually.

State of Illinois.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum the said county for value received, promises to pay said company or bearer, in the city and State of New York, twenty years after date payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton with interest thereon from the date hereof at the rate of seven per cent. per annum payable semi-annually on the first
5 days of January and July, in each year on presentation and surrender, at the place in said city of New York, where the treasurer of the State of Illinois pays the interest and debts of said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th A. D. 1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, A. D. 1869, entitled, "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company, in the sum of two hundred thousand dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the county judge of said county, under the orders of the county court of said county, signing his name hereto, in open court, and by the clerk of said court, in obedience to the order thereof attesting the same and affixing hereto the seal of said court, in open court.

Done at the court-house at McLeansboro, in said county, on this 23d day of October anno Domini 1871.

T. B. STELLE,

[SEAL.] *County Judge of Hamilton County, Ill.*

J. W. MARSHALL,

Clerk of the County Court of Hamilton County, Ill.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 1, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16, 1869.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
[SEAL.] *Auditor P. A.*

6 And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants, A $35.00 each series 31 to 40, inclusive, dated Jan'y 1, 1872, and due Jan'y and July 1 of 1888, 1889, 1890, 1891 and Jan. 1, 1892, representing the interest on each of said bonds at the rate of seven per cent. per annum, and payable in the city of New York, aforesaid. That said coupons are all an exact fac-simile of each other, save as to the number of the bonds to which they are attached, their serial numbers and dates when they become due.

Coupon serial No. 40 on bond No. 46, due Jan'y 1st, 1892, is in the words and figures following, to wit:

$35. $35.

McLEANSBORO, HAMILTON COUNTY,
ILLINOIS, *Jan. 1st*, 1872

The County of Hamilton, in the State of Illinois, promises to pay the sum of thirty-five dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on bond No. 46 for one thousand dollars, issued on subscription to the St. Louis and Southeastern Railway Company.

This coupon is payable in the city of New York.

J. W. MARSHALL, *Clerk.*

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount, save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St. Louis and Southeastern Railway Company, and of a vote of a majority of the legal voters in said county at an election held pursuant to law Nov. 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns," and that six (6) bonds were duly registered by the State auditor, as aforesaid, Nov. 1st, 1872, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons

thereto attached were purchased by her for an investment in th usual course of business, for a good and valuable consideration, somewhere on or about Feb. 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds, and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

7 By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified, according to the tenor and effect of the said coupons and bonds, and being so liable, said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sums of money, and interest thereon, as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898, at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to the said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received due and for use of said plaintiff; and being so indebted, said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to wit, upon the same day and year, and at the county and district last aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars ($20,000), lawful money, as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the same place, aforesaid, undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of twenty thousand dollars ($20,000), and therefore said plaintiff brings this her suit, etc.

GEORGE A. SANDERS,
Plaintiff's Attorney.

8 The County of Hamilton, State of Illinois, to Harriet M. Zane, Dr.

To goods, wares and merchandise sold and delivered.....	$20,000
To money lent and advanced.....	20,000
To money paid out and expended.....	20,000
To money had and received.....	20,000
To balance due on account.....	20,000
To interest forborne due plaintiff	20,000

(Indorsed:) Filed November 7th, 1898. James T. Jones, clerk.

And afterwards, to wit, on the 6th day of January in the year of our Lord one thousand eight hundred and ninety-nine came the County of Hamilton, by Messrs. J. R. Williams and J. M. Hamill, its attorneys, and filed in the clerk's office of said court its demurrer to declaration, as follows, to wit:

Demurrer. Filed Jan. 6, 1899.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

In the United States Circuit Court, January Term, A. D. 1899.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

J. R. WILLIAMS AND
J. M. HAMILL,
Att'ys for Def't.

(Indorsed:) Filed Jan. 6th, 1899. James T. Jones, clerk.

Then afterwards to wit on the twenty-first day of December in the June term of said court in the year last aforesaid the following proceedings were had in said court in said case and entered of record to wit:

9 *Order of Dec. 21, 1899, Sustaining Demurrer.*

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

This day this case came on to be heard upon demurrer of defendant to plaintiff's declaration and the court having heard argument of counsel thereon sustains said demurrer and the plaintiff electing

to stand by her said declararion, it is therefore ordered and adjudged by the court that the defendant recover of the plaintiff its costs and charges by it about its suit in this behalf expended and that execution issue therefor.

Then afterwards to wit, on the said 28th day of March of the year last aforesaid came again the plaintiff by her attorney and filed in the clerk's office of said court her bill of exceptions in said case as follows to wit:

Bill of Exceptions. Filed M'ch 28, 1900.

Bill of exceptions.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

In the Circuit Court, at the January Term, A. D. 1899.

HARRIET M. ZANE }
vs. } Assumpsit. Damages, $20,000.
COUNTY OF HAMILTON. }

In the above-entitled cause, a general demurrer to plaintiff's declaration as filed January 6, 1899 which was orally argued on or about April 1st, 1899 and leave given to file briefs, which was accordingly done and on the 21st of December 1899 the court rendered his decision sustaining the demurrer and giving judgment for the defendant to which decision of the court, plaintiff then and there excepted, for the reason that it is contrary to the law in the case. It is hereby stipulated and agreed by the parties to this suit that the only cause of action of the plaintiff against the defendant in this suit are the bonds and coupons described in plaintiff's declarttion.

Plaintiff elected to stand by her declaration and prayed for a writ of error to the U. S. circuit court of appeals, which was granted on filing bond for $500.00 and bill of exceptions within sixty (60) days.

10 And inasmuch as the matters aforesaid do not appear of record counsel for plaintiff presents this bill of exceptions and prays that the same may be signed and sealed by the court and made a part of the record and it is done accordingly.

WILLIAM J. ALLEN, [SEAL.]
U. S. District Judge.

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Then afterwards to wit on the 28th day of March in the January term of said court in the year of our Lord one thousand nine hundred the following further proceedings were had in said case in said court and entered of record to wit:

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

This day comes the plaintiff by G. A. Sanders Esq. her attorney and files her petition for writ of error from this court to the United States circuit court of appeals for the seventh circuit, said petition being accompanied by assignment of errors as required by the rules of said circuit court of appeals it is ordered by this court that said writ of error be allowed. Plaintiff presents her bond on writ of error in the sum of five hundred dollars which bond is approved by the court and ordered to be filed.

Petition for Writ of Error. Filed M'ch 28, 1900.

Petition for writ of error.

UNITED STATES OF AMERICA:

In the Circuit Court, Southern District of Illinois.

HARRIET M. ZANE
vs.
THE COUNTY OF HAMILTON. } Assumpsit. Damages, $20,000.

And now comes the plaintiff by George A. Sanders, her attorney in the above-entitled cause, and petitions the court for a writ of error in this cause to the circuit court of appeals for the seventh circuit to be holden in the city of Chicago.

11 *Assignment of Errors. Filed M'ch* 28, 1900.

And plaintiff herewith files an assignment of errors in accordance with the rules of said circuit court of appeals praying for a reversal of the judgment rendered in the above-entitled cause, on demurrer to her declaration sustained by the judge of the circuit court for the southern district of Illinois, December 21st, 1899.

Assignment of Errors.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above-entitled cause in this:

First.

The court erred in sustaining defendant's demurrer to plaintiff's declaration and giving the judgment for defendant on the demurrer for costs.

The plaintiff in this case elects to stand by her declaration, which is in the words and figures following to wit:

Declaration.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of The County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the southern district of Illinois, defendant in this suit, who has been summoned, etc., to answer to the plaintiff in a plea or trespass on the case on promises.

For that whereas the defendant heretofore, at the county-seat of Hamilton county, in the district aforesaid, at the court-house at McLeansboro, made, executed and delivered by S. B. Stelle, then county judge of Hamilton county, Illinois and J. W. Marshall then clerk of the county court of said county, among others its six (6) county bonds, numbered 45–46–47–48–49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent. per annum evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871 and issued to the St. Louis & Southeastern Railway Company, or bearer, and were
12 payable in the city and State of New York, twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of Jan'y and July of each year where the State treasurer of the State of Illinois, pays the interest and debt of said State, in the city of New York.

That said bonds were registered by the auditor of the State of Illinois, Nov. 1, 1871, and with coupons attached evidencing the interest attached, so made, executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to wit:

No. 46. UNITED STATES OF AMERICA, $1,000.00.

Bond of Hamilton County.

Interest seven per cent., Payable semi-annually.

State of Illinois.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum of — said county for value received, promises to pay said company or bearer, in the city and State of New York, twenty years after date, payable at any time before this bond be-

comes due after five years at the pleasure of said County of Hamilton with interest thereon, from the date hereof at the rate of seven per cent. per annum payable semi-annually on the first days of January and July, in each year on the presentation and surrender, at the place in the said city of New York where the treasurer of the State of Illinois pays the interest and debt of the said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in the said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th, A. D. 1869, entitled "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16th,
13 A. D. 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of two hundred thousand dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the county judge of the said county, under the order of the county court of said county, signing his name hereto, in open court, and by the clerk of said court, in obedience to the order thereof attesting the same and affixing hereto the seal of the said court, in open court.

Done at the court-house at McLeansboro, in said county on this the 23rd day of October anno Domini 1871.

T. B. STELLE,

[SEAL.] *County Judge of Hamilton County, Ills.*

Attest:

J. W. MARSHALL,

Clerk of the County Court of Hamilton County, Ills.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 1*st*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th 1869.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,

[SEAL.] *Auditor P. A.*

And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants, A $35.00 each series 31 and 40 inclusive dated Jan'y 1, 1872 and due Jan'y and July of 1883–1889–1890–1891 and Jan'y 1–1892, representing the interest on each of said bonds at the rate of seven per cent. per annum and payable in the city of New York aforesaid. That said coupons were all an exact fac-simile of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they became due.

Coupon serial No. 40, on bond No. 46 due Jan'y 1st, 1892, in the words and figures following to wit:

14 $35.00. $35.00.

McLEANSBORO, HAMILTON COUNTY,
ILLINOIS, *Jan'y 1st*, 1872.

The County of Hamilton in the State of Illinois promises to pay the sum of thirty-five dollars on the first day of January 1892, lawful money of the United States of America, being six months' interest on bond No. 46, for one thousand dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the city of New York.

J. W. MARSHALL, *Clerk.*

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10–1869 incorporating the St. Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in the said county at an election held pursuant to law Nov. 3rd, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, 1869, entitled, "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns," and that said six (6) bonds were duly registered by the State auditor as aforesaid, Nov. 1st, 1872, under the act of April 16th, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an investment in the usual course of business, for a good and valuable consideration, somewhere on or about February 1st, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said

plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898 at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received, due and for use of said plaintiff; and being so indebted said defendant in consideration thereof, afterwards, to wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards to wit, upon the same day and year, and at the county and district aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff, then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars, ($20,000) lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards to wit: on the same day and year and at the same place aforesaid undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of twenty thousand dollars ($20,000) and therefore said plaintiff brings this her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton, State of Illinois, to Harriet M. Zane, Dr.

To, goods, wares and merchandise sold and delivered.....	$20,000
To money lent and advanced.....	20,000
To money paid out and expended.....	20,000
To, money had and received.....	20,000
To, balance due on account.....	20,000
To, interest forborne due plaintiff.....	20,000

A general demurrer to plaintiff's declaration, was filed, as follows, to wit:

16 *Assignment of Errors. Filed March* 28, 1900.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

In the United States Circuit Court, January Term, A. D. 1899.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed) J. R. WILLIAMS AND
J. M. HAMILL,
Att'ys for Def't.

Declaration endorsed as follows: No. 8545. Circuit court, January term A. D. 1899. Harriet M. Zane, plaintiff, *vs.* The County of Hamilton, defendant. Declaration. Filed November 7–1898. James T. Jones, clerk.

Demurrer to the declaration endorsed: Harriet M. Zane *vs.* County of Hamilton. Demurrer to declaration. Filed January 6, 1899. James T. Jones, clerk.

Second.

The court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration but denies that under the law applicable to this case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then county judge, S. B. Stelle, and its then county clerk, J. W. Marshall at its court-house in McLeansboro, the county-seat of defendant, Hamilton County, Illinois, did make, execute and deliver among others, its six (6) county bonds numbered 45–46–47–48–49 & 50, commonly called railroad aid bonds for $1,000 each, bearing interest at the *the* rate of seven per cent. per annum evidenced by coupon interest notes for $35.00 each and payable Jan. & July of each year.

17 That said bonds were dated Oct. 23–1871, and issued to the St. Louis & Southeastern Railway Company or bearer, and were payable in the city and State of New York, twenty years from date or at any time after five years at the option of the county, with seven per cent. interest Jan. and July 1st of each year where the State treasurer of the State of Illinois pays the interest and debt of said State in the city of New York.

That said bonds were registered by the then State auditor Nov. 1, 1871 as will fully appear by copy of a bond No. 46—*supra.*

That said bonds were a part of an issue 200 of like tenor and amount and issued under and by virtue of the authority given by a majority of all the legal voters of said county, by their votes, at an election held in said county, pursuant to law, on the 3rd day of November 1868 and also by authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th–1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois in force April 16th, 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

The bonds were issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company in the sum of ($200,000) two hundred thousand dollars.

Plaintiff avers that she purchased the six bonds and coupons mentioned in the declaration as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts are all admitted by the demurrer and makes the plaintiff a *bona fide* holder and owner for value of the bonds and coupons mentioned in the declaration.

"An act to incorporate the St. Louis and Southeastern Railroad Company," in force March 10, 1869. Pages 239–245, Private Laws, State of Illinois, vol. 3, 1869.

SEC. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they
18 may think proper, payable in bonds, lands or right of way, and subject to such agreements and stipulations, as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Provided, that no subscriptions shall be made by any county court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the county court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be called, conducted and returns made, canvassed and published in the usual manner of conducting elections in said county, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, upon which is printed or written "For subscription" or "Against subscription,"

and if a majority of the ballots cast at such election shall be "For subscription," it shall be the duty of the county court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stock *holders* of said company.

SEC. 16. Elections may be held in any such county, incorporated city or town or township, upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the county clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding *by* such an election, it shall be the duty of the county clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city, or town, signed by twenty-five legal voters of any such township, city or town, setting forth the amount of stock proposed to be taken by any such township, city or town, and specifying the time for holding such election, it shall be the duty of the supervisor of every such township and the duty of the clerk of any such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the same places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For subscription," or "Against subscription," and if a majority of the votes cast at such election by voters voting on that subject, shall be "For subscription," it shall be the duty of the county court or board of supervisors of every such county, the supervisor and clerk of such township and the corporate authorities of such city or town to subscribe, at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount *at* the stock so subscribed of the bonds of such county, township, city, or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same, at a rate not exceeding eight per cent., payable annually or semi-annually; which said bonds shall be of such denomination and the principal and interest payable at such place or places, either within or without the State, as may be agreed upon, provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State and county purposes, it shall not be necessary for the several boards of registry to make a new register

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of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and county officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters (votes) are taken at any general election.

SEC. 17. Any incorporated city, town or township, or any county through or near which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such terms and conditions as may be agreed upon by and between said city, town, township, or county, and the said railway company, to secure the building of said railway: Provided, that the authorities of said city, town, township or county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places—the amount proposed to be donated being stated in the order for such election, and the tickets voted at such election shall have written or printed on them "For donation" or "Against donation;" and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town or township, or county, to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railway company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent. per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

SEC. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually or semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

SEC. 20. And the said company may lease or purchase, upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted, as part of their main line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road, or part of road, in the right of way, construction, maintenance and working thereof. And the county court of Gallatin county is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of

Hamilton county is hereby authorized and empowered to subscribe to the capital stock of this company the two hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of Jefferson county is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars; or any part thereof, voted by a majority of the legal voters of said county to the Mount Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties.

Provided: That nothing herein shall be so construed as to prevent either of the counties mentioned in this section subscribing any other or larger amounts to the capital stock of this company than the amounts mentioned in this section.

21 SEC. 21. This act shall be deemed a public act, and shall be liberally construed for all purposes therein expressed and declared, and shall be in force from and after its passage.

Approved March 10, 1869.

GEORGE A. SANDERS,
Attorney for Plaintiff.

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Bond for Writ of Error. Filed March 28, 1900.

Bond on writ of error.

Circuit Court of the United States for the Southern District of Illinois.

HARRIET M. ZANE, Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, Defendant in Error. } Assumpsit. Damages, $20,000.

Bond.

Know all men by these presents, that we, Harriet M. Zane, resident of Boston, in the State of Massachusetts, and George A. Sanders, of Springfield, Illinois, are held and firmly bound unto the County of Hamilton, in the State of Illinois, in the sum of five hundred dollars, to be paid to the said County of Hamilton, in the State of Illinois, to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our successors, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of January, 1900.

Whereas, the above-mentioned Harriet M. Zane, of Boston, Mass., is about to prosecute a writ of error to the United States circuit court of appeals, seventh circuit, to reverse the judgment and decree

rendered in a certain action at the January term, A. D. 1899, by the circuit court of the United States, for the southern district of Illinois, in which action Harriet M. Zane was plaintiff, and The County of Hamilton defendant, whereby the validity of certain bonds and coupons owned by the said Harriet M. Zane and executed by the said County of Hamilton was denied;

Now, therefore, the condition of this obligation is such that if the above-named Harriet M. Zane, of Boston, Mass., shall prose-
22 cute her said writ of error to effect and answer all costs and damages rendered and to be rendered in case the judgment and decree shall be affirmed, or if she shall fail to make good her appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the plaintiff Harriet M. Zane, has caused this instrument to be signed by her, by her attorney-in-fact, and the said George A. Sanders has signed and sealed this instrument.

HARRIET M. ZANE, [SEAL.]
By GEORGE A. SANDERS,
Her Att'y-in-fact.
GEORGE A. SANDERS. [SEAL.]

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Writ of Error. Filed March 28, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States *of* the honorable judges of the circuit court of the United States for the southern district of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you between Harriet M. Zane plaintiff and The County of Hamilton, Illinois, defendant, a manifest error hath happened to the great damage of the said Harriet M. Zane as by her complaint appears. We being willing that error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the United States circuit court of appeals for the seventh circuit together with this writ so that you may have the same at Chicago on Monday the sixteenth day of April 1900 in the said United States circuit court of appeals for the seventh circuit to be then and there held that the record and proceedings aforesaid being inspected the said United States circuit court of appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States this twenty-eighth day of March

in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

JAMES T. JONES,
Clerk Circuit Court U. S., South. Dist. Illinois.

(Endorsed:) Filed March 28, 1900. James T. Jones, clerk.

23 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain case wherein Harriet M. Zane is plaintiff and The County of Hamilton is defendant as truly and completely as the same appear of file and record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Springfield in said district this thirtieth day of March in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

JAMES T. JONES, *Clerk.*

Citation.

THE UNITED STATES OF AMERICA, ss:

To the County of Hamilton, State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the seventh circuit to be holden at Chicago on the sixteenth day of April 1900 pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois wherein Harriet M. Zane is plaintiff and you are defendant in error to show cause if any there be why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Honorable William J. Allen, district judge of the United States for the southern district of Illinois at Springfield in said district this twenty-eighth day of March in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

WILLIAM J. ALLEN,
District Judge.

Service of the foregoing citation is hereby accepted this 29th day of March, 1900.

J. M. HAMILL,
J. R. WILLIAMS,
Attorneys for Hamilton County, Ill.

24 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 23, inclusive, is a copy of the printed record filed in this court on the tenth day of April, 1900, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States circuit court of appeals for the seventh circuit, in cause No. 675, Harriet M. Zane vs. County of Hamilton, Illinois.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventeenth day of May, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

25 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago in said seventh circuit on the third day of October, 1899, of the October term, in the year of our Lord one thousand eight hundred and ninety-nine and of our Independence the one hundred and twenty-fourth year.

And afterwards, to wit: on the fourth day of April, 1900, in the October term last aforesaid, came the plaintiff in error, by her counsel, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
COUNTY OF HAMILTON, ILLINOIS, Defendant in Error. } No. 675.

The clerk will enter my appearance as counsel for the plaintiff in error.

GEORGE A. SANDERS,
For Plaintiff.

Endorsed: Filed Apr. 4, 1900. Edward M. Holloway, clerk.

And afterwards on the same day, to wit: on the fourth day of April, 1900, in the October term last aforesaid, came the defendant in error, by its counsel Mr. J. M. Hamill and Mr. J. R. Williams, and filed in the office of the clerk of this court their appear-
26 ance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
COUNTY OF HAMILTON, ILLINOIS, Defendant in Error,
} No. 675.

The clerk will enter my appearance as counsel for the defendant in error.

J. M. HAMILL.
J. R. WILLIAMS.

Endorsed: Filed Apr. 4, 1900. Edward M. Holloway, clerk.

And afterwards, to wit: on the first day of May, 1901, in the October term last aforesaid the following proceedings were had and entered of record, to wit:

TUESDAY, *May* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

Order.

It is ordered by the court that Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Kohlsaat appeared and took his seat as a member of said court.

27 And afterwards, on the same day, to wit: on the first day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON, ILLINOIS.
} 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

It is ordered by the court that this cause be placed on the calendar and that the same be and is hereby set down for hearing May 22, 1900.

And afterwards, to wit: on the seventh day of May, 1900, in the October term, last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *May* 7, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

28 *Order.*

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit: on the twenty-second day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May* 22, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON. } 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. George A. Sanders, counsel for plaintiff in error, and by Mr. J. M. Hamill, counsel for defendant in error, and the court having heard the same, takes this matter under advisement.

29 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the second day of October, 1900 of the October term, in the year of our Lord one thousand nine hundred, and of our Independence the one hundred and twenty-fifth year.

And afterwards, to wit: on the second day of October, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October* 2, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge. Hon. William H. Seaman, district judge.

Order.

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit, on the same day, to wit: on the second day of October, 1900, in the October term last aforesaid there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, said opinion being in the words and figures following, to wit:

30 In the United States Circuit Court of Appeals for the Seventh Circuit, May Session, A. D. 1900.

HARRIET M. ZANE, Plaintiff in Error, vs. COUNTY OF HAMILTON, ILLINOIS, Defendant in Error.	No. 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Before Woods and Grosscup, circuit judges, and Seaman, district judge.

WOODS, circuit judge, delivered the opinion of the court:

This was an action in assumpsit, brought by Harriet M. Zane, a citizen of Massachusetts, against The County of Hamilton, Illinois, to recover the amount alleged to be due upon six bonds for $1000 each issued in the name of the county to the St. Louis and Southeastern Railway Company, or bearer, and of which the plaintiff was alleged to be an innocent purchaser. The circuit court sustained a demurrer to the declaration and, the plaintiff refusing to amend, gave judgment for the defendant. The question is whether there was authority of law for the issue of the bonds.

The bonds bear date October 23, 1871 and were not executed before that date. They are a part of the issue of $200,000 referred to in the case of *Austin v. Hamilton County*, 22 C. C. A. 128, 76 Fed. 208, but are not a part of the 105 which, as shown in that case, had been owned by Walter M. Jackson and in a suit to which the county and he were parties had been adjudged to be valid. The only authority asserted for the issue of the bonds is section 20 of the
31 act of March 10, 1869, whereby the St. Louis and Southeastern Railway Company was incorporated. In *People ex rel. v. Hamill*, 134 Ill. 666, where the validity of these bonds was in issue, it was held that they were invalid because section 20 of the act mentioned was void, as being in violation of the provision of the constitution of the State that "no private or local law * * * shall embrace more than one subject, and that shall be expressed in the title." This court recognized the authority of that decision in the

Austin case, and must recognize it now. It follows that the bonds were issued without authority of law, and in the hands of any and all holders, unless like Jackson they can claim under an unreversed adjudication, must be regarded as invalid. No recital can supply the want of legal authority for their execution.

The judgment below is affirmed.

32 And afterwards, on the same day, to wit: on the second day of October, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October* 2, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON, ILLINOIS.	675. Error to the Circuit Court of the United States for the Southern District of Illinois.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Illinois, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to wit: on the twenty-seventh day of October, 1900, in the October term last aforesaid, came the plaintiff in error, by her counsel, Mr. George A. Sanders, and filed in the office of the clerk of this court her petition for rehearing, said petition for rehearing being in the words and figures following, to wit:

33 In the United States Circuit Court of Appeals, Seventh Circuit, October Term, A. D. 1900.

HARRIET M. ZANE, Plaintiff in Error, *vs.* THE COUNTY OF HAMILTON, ILLINOIS, Defendant in Error.	No. 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Petition for Rehearing.

After carefully examining the opinion of this honorable court in the above-entitled cause, I respectfully submit to the court whether this cause is not a case in which a rehearing ought to be granted upon the ground that— * * *.

For the above reasons we respectfully ask this honorable court that a rehearing of this case be granted.

GEORGE A. SANDERS,
Attorney for Plaintiff.

Endorsed: Filed Oct. 27, 1900. Edward M. Holloway, clerk.

And afterwards, to wit: on the thirteenth day of November, 1900, the following further proceedings were had and entered of record, to wit:

TUESDAY, *November* 13, 1900.

Court met pursuant to adjournment.

34 Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

Before: Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON, ILLINOIS. } 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Now again this cause comes on to be considered on the petition for rehearing, and on consideration thereof, it is now here ordered that the petition for rehearing be, and the same is hereby overruled.

35 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten pages numbered from 1 to 10, inclusive, contain a true copy of the papers filed and proceedings had thereon (except briefs of counsel) in the United States circuit court of appeals for the seventh circuit, in the case of Harriet M. Zane, *vs.* County of Hamilton, Illinois, No. 675, October term 1899, as the same remains upon the files and records of the United States circuit court of appeals, for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventeenth day of May, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

36 UNITED STATES OF AMERICA:

U. S. Supreme Court, at the October Term, A. D. 1901.

HARRIET M. ZANE, Plaintiff, *vs.* THE COUNTY OF HAMILTON, ILLS., Defendant. } No. 344. Petition for Certiorari.

It is hereby agreed and stipulated by the parties to the above-entitled cause through their attorneys: That a certified copy of the record in the U. S. circuit court of appeals of this case be taken as a return to the writ of certiorari granted by the United States Supreme

Court in the above-entitled cause of date November 27th A. D., 1901.

GEORGE A. SANDERS,
Attorney for Plaintiff.
J. M. HAMILL,
Attorney for Defendant.

Endorsed: Filed Dec. 10, 1901. Edward M. Halloway, clerk.

37 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which Harriet M. Zane is plaintiff in error, and The County of Hamilton, Illinois, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the southern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
38 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of November, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

39 [Endorsed:] File No. 18,197. Supreme Court of the United States. No. 344, October term, 1901. Harriet M. Zane *vs.* The County of Hamilton, Illinois. Writ of certiorari. Filed Dec. 10 1901 Edward M. Holloway, clerk.

UNITED STATES OF AMERICA, *Seventh Circuit,* } *ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Harriet M. Zane, plaintiff in error, *vs.* County of Hamilton, Illinois, is a full, true and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together *will* all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, Illinois, this eleventh day of December, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

40 [Endorsed:] File No. 18,197. Supreme Court U. S. October term, 1901. Term No. 115. Harriet M. Zane, petitioner, *vs.* The County of Hamilton, State of Illinois. Writ of certiorari and return. Filed Dec. 13, 1901.

IN THE

Supreme Court of the United States.

No. 344.—October Term, A. D 1902.

Harriet M. Zane,
Plaintiff in Error,
v.
The County of Hamilton, Ills.,
Defendant in Error.

Petition for Certiorari.

Death of Plaintiff Suggested,

and

Motion to substitute Ferdinand F. Favor, of Dedham, Mass., Administrator, as Plaintiff.

And now comes Ferdinand F. Favor, of Dedham, Mass., Administrator of the estate of Harriet M. Zane, deceased, by his attorney, George A. Sanders, and suggests the death of Harriet M. Zane, the original plaintiff herein, and moves this Honorable Court that he as administrator of her estate be substituted as plaintiff, and be permitted to prosecute to a final decision the above entitled suit.

In proof of the death of Harriet M. Zane, and the appointment of Ferdinand F. Favor administrator of her estate, a copy of letters of said appointment by the Probate Court at Boston, Mass., dated May 1st, 1902, is filed with the Clerk of this Honorable Court.

Ferdinand F. Favor — Administrator.

By Geo. A. Sanders His Attorney.

Geo. A. Sanders
Attorney —

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

HARRIET M. ZANE,
Plaintiff in Error,

vs.

THE COUNTY OF HAMILTON, ILLS.,
Defendant in Error.

DEATH OF PLAINTIFF SUGGESTED,

AND

Motion to substitute her Administrator.
Ferdinand F. Favor, as Plaintiff.

GEORGE A. SANDERS,
Attorney.

COMMONWEALTH OF MASSACHUSETTS, }
Suffolk County. }

I, John Noble, clerk of the supreme judicial court within and for the county of Suffolk, do hereby certify that in the transcript of the record of the case entitled Henry Bigelow Williams and Charles F. Ayer, trustees, plaintiffs in error, *versus* Hosea M. Knowlton, attorney general, in the Supreme Court of the United States, No. 116, October term 1902, certain clerical errors appear, as follows:—

The words "Which motion upon hearing was allowed," appearing at the foot of page 14 of the record as printed, were inserted in the transcript of record by error, and should be stricken out, as not a part of the record.

Also that on page 50 of the record as printed, in the second line of the paragraph numbered 68, the words "upon the pleadings, the defendants' motion to have the city of Boston made a party, and the appeal from the overruling thereof, and the agreed facts" should be inserted, next after the words "was reserved" in said second line of the paragraph numbered 68; being a part of the record and having been omitted by error from the transcript of the record.

Witness my hand and the seal of the court at Boston in said county, this 22nd day of October in the year 1902.

[SEAL.] JOHN NOBLE, *Clerk.*

Supreme Court of the United States, October Term, 1902.

HENRY BIGELOW WILLIAMS and CHARLES F. AYER, Trustees, Plaintiffs in Error,
vs.
HOSEA M. KNOWLTON, Attorney General of Massachusetts. } No. 116.

Agreement to Amend Record.

It is hereby stipulated and agreed that the transcript of the record and the printed copies thereof, in the above-entitled cause, may be amended and corrected so as to conform to the foregoing certificate of the clerk of the court in which the record remains, by striking out, at the foot of page 14 of the record as printed, the words "Which motion upon hearing was allowed;" and by inserting on page 50 of the record as printed, in the second line of the paragraph numbered 68, next after the words "was reserved," the words "upon the pleadings, the defendants' motion to have the city of Boston made a party, and the appeal from the overruling thereof, and the agreed facts."

[SEAL.]

A. E. PILLSBURY,
For the Plaintiffs in Error.
SAMUEL J. ELDER,
For the Defendant in Error.

[Endorsed:] File No. 18198 Supreme Court U. S. October term, 1902. Term No. 116 Henry Bigelow Williams *et al.*, trustees, P. E. *vs.* Hosea M. Knowlton, attorney general, &c. Stipulation to correct record. Filed Oct. 25, 1902

Filed

No. 115

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Petitioner,

vs

THE COUNTY OF HAMILTON, STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

GEORGE A. SANDERS,
Solicitor for Petitioner.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Petition for Writ of Certiorari to the Supreme Court of the United States of America.

The petition of Harriet M. Zane, plaintiff in error, for a writ of certiorari, directed to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit, under the provisions of Section 6, of the Act of Congress, approved March 3, 1891, and ordering that the records in a certain appeal by writ of error be certified to this honorable Court for its review and determination.

That said appeal by writ of error is entitled as follows: "Harriet M. Zane, plaintiff in error, vs. The County of Hamilton, defendant in error; No. 675, October Term, A. D. 1899. United States Circuit Court of Appeals for the Seventh Circuit."

STATEMENT OF THE CASE.

The declaration is in the usual form, to which the defendant filed a general demurrer. Upon a hearing on the demurrer, the Court sustained the demurrer, and gave judgment for the defendant for costs. The plaintiff elected to stand by her declaration and took a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit.

The facts are stated in the declaration and in the assignments of error. The demurrer admits the facts as stated in the declaration; but denies the right of the plaintiff to recover under the law applicable to the case.

The facts stated in the declaration and admitted by the demurrer were that the defendant at its Court House at McLeansboro, in the district of Southern Illinois, made, executed and delivered by S. B. Stelle, then Judge of Hamilton county, Illinois, and J. W. Marshall, then Clerk of the County Court of said county, among others, its six county bonds, numbered 45, 46, 47, 48, 49 and 50—commonly called Railroad Aid bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes each for $35.00, due and payable on the first days of January and July of each year.

The bonds were dated Oct. 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, and payable at any time before they became due after five years.

The bonds were registered by the auditor of the State of Illinois, November 1, 1871, and with coupons attached evidencing the interest and were exact copies of each other except as to their serial numbers, date of interest due and numbers of the bonds. A copy of bond No. 46 and coupon serial No. 40, due January 1, 1892, are given in Assignment of Errors.

The recital on each bond is: "This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all legal voters in said county, by their votes, at an election held in said county *pursuant to law*, on the 3d day of November, A. D. 1868, and also by the authority given by the provisions of an Act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "an Act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an Act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns." This bond is issued in part payment of a subscription made by said county, under and by virtue of the author-

ity aforesaid, to the capital stock of the said St. Louis and Southeastern Railway Company in the sum of two hundred thousand dollars.

The plaintiff avers in the declaration that she purchased the six bonds and coupons mentioned therein as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of interest or principal of said bonds and without any notice whatever of any supposed want of legislative power, or irregularity in their issue.

October 2, 1900, the United States Circuit Court of Appeals for the Seventh Circuit handed down an opinion in the cause affirming the decision of the trial Court.

A petition for a rehearing was filed by the plaintiff and heard May 2d, 1900, and on the 13th day of November, 1900, the petition for a rehearing was denied.

HISTORY OF THE BONDS AND CASES THEREON.

An election was held *pursuant to law* November 3, 1868, and a majority of the electors voted to subscribe $200,000 to the stock of the St. Louis & Southeastern Railway Company, and issue in payment of the stock subscribed $200,000 of bonds 5—20 years with 7 per cent semi-annual interest, dated October 23, 1871, and registered by the State Auditor November 1, 1871.

Petitioner purchased her bonds and coupons in the case at bar for a good and valuable consideration, on or about

February 1, 1874, without any notice of any claimed want of power to, or irregularity in their issue, and long before any default in the payment of interest.

The interest was regularly paid on these bonds until 1880 or thereabouts.

The first adjudication concerning this issue of bonds was in a chancery proceeding commenced by the County of Hamilton to restrain and enjoin the levy and collection of taxes to pay interest on these bonds. This case was removed to the Federal Court of the Southern District of Illinois by Walter Jackson, who filed a cross-bill, and upon a hearing of the bill and cross bill, Jackson's bonds ($105,000) as numbered in his cross bill, 105 bonds were held, "valid, legal and binding obligations of the said county."

The original bill was dismissed at the cost of the complainant and this decree, dated June 5, A. D. 1881, was never appealed from, reversed, or in any manner set aside or annulled, and the bonds and interest covered by this decree have since been fully paid by the defendant, the county of Hamilton.

Six years thereafter, June 16, 1888, a decision in an *ex-parte* proceeding was rendered by the State Supreme Court in the case of the *People vs. Hamill*, 134 Ill. 670-671, holding this issue of $200,000 of bonds void for want of legislative power to issue them. That the Act of March 10, 1869, was in violation of Section 23, Article 3, of the Constitution of Illinois of 1848, because it was (as held by that Court) a local act, and

not germane to the object expressed in its title, and therefore conferred no legislativve authority for the issue of the bonds.

October 5, 1896, the United States Circuit Court of Appeals rendered a decision in the case of Austin vs. Hamilton County, 22 C. C. A., 128, in which other bonds and coupons of this same issue than those mentioned by number in the decree of the Federal Court were involved. The trial Court followed the State Court decision in the People vs. Hamill, 134 Ill. 666, and the Appellate Court affirmed that decision, giving for one reason, that Austin, the holder of the bonds, did not appear to be an innocent purchaser and bona-fide holder of the bonds.

In the Austin case the Court say: "Here it is true, the findings say that the construction of Section 20 of the Act of Incorporation of the Railroad Company, was not drawn in question, passed upon or 'decided' in the chancery cause. *But that is a mistaken conclusion of law*, rather *than a finding of fact*, under the issues joined, both upon the bill and the cross bill, the validity and force of that section, equally with any other enactment referred to in the recitals of the bonds, were *necessarily* within the scope of inquiry, whether actually considered or not, and therefore were *determined* by *the decree*, in which, according to the findings, Jackson's bonds were specified by number and all declared valid. The question of the *validity* of these (Jackson's) bonds *is not open to reconsideration*."

The validity of the enabling Act of March 10, 1869, and that it was not repugnant to the constitution of 1848, was established by the decree of the Federal Court of June 5, 1881, and by the Austin case, *supra*, Oct. 5, 1896, overruling the State Court in the Hamill case, *supra*, decided June 16, 1888, as to the constitutionality of the Act of March 10, 1869, which is the dominant question in the case at bar.

May 7, 1896, the United States Circuit Court of Appeals in the case of Bolles et al vs. Hamilton County, affirmed the decision of the trial Court which was for the defendant, and refused to pass upon the merits of the controversy, because there were no special findings with the bill of exceptions, and as they held, no question was presented for their consideration.

The next and last attempt at adjudication of these bonds is in this case, Harriet M. Zane vs. Hamilton County, Oct. 2, 1900, No. 675 decision in 104 Fed. Rep., 63, in which we now ask for a writ of certiorari.

In this case the Appelate Court affirms the trial Court's decision, stating that it had followed the State Court decision in the Hamill case, 134 Ill. 666, in its decision in the Austin case, and must recognize it in the case at bar, and that such State Court decisions were binding on the Federal Courts.

Petition for a rehearing was filed in October, 1900, and overruled.

We cite the decision of the Appellate Court, which is as follows, to-wit:

Woods, Circuit Judge. This was an action in assumpsit, brought by Harriet M. Zane, a citizen of Massachusetts, against the County of Hamilton, Illinois, to recover the amount alleged to be due upon six bonds for $1,000 each, issued in the name of the county to the St. Louis and Southeastern Railway Company, or bearer, and of which the plaintiff was alleged to be an innocent purchaser. The Circuit Court sustained a demurrer to the declaration, and, the plaintiff refusing to amend, gave judgment for the defendant. The question is whether there was authority of law for the issue of the bonds. The bonds bear date October 23, 1871, and were not executed before that date. They are a part of the issue of $200,000 referred to in the case of Austin vs. Hamilton County, 22 C. C. A. 128, 76 Fed. 208, but are not a part of the 105 bonds which, as shown in that case, had been owned by Walter M. Jackson and in a suit to which the county and he were parties had been adjudged to be valid. The only authority asserted for the issue of the bonds is Section 20 of the Act of March 10, 1869, whereby the St. Louis & Southeastern Railway Company was incorporated. In People vs. Hamill, 134 Ill. 666, 17 N. E. 799, 29 N. E. 280, where the validity of these bonds was an issue, it was held that they were invalid, because Section 20 of the act mentioned was void, as being in violation of the provision of the constitution of the State (Article 3, Sec. 23), that "no private or local law * * * shall embrace more than one subject, and that shall be expressed in the title." This Court recognized the authority of that decision in the Austin case, and must recog-

nize it now. It follows that the bonds were issued without authority of law, and in the hands of any and all holders, unless, like Jackson, they can claim under an unreversed adjudication, must be regarded as invalid. No recital can supply the want of legal authority for their execution. The judgment below is affirmed.

ASSIGNMENT OF ERRORS.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above entitled cause in this:

FIRST.

The Court erred in sustaining defendant's demurrer to plaintiff's declaration and giving the judgment for defendant on the demurrer for costs.

The plaintiff in this case elects to stand by her declaration, which is in the words and figures following, to-wit:

DECLARATION.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of the County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the Southern District of Illinois, defendant in this suit, who has been summoned, etc., to answer to the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county seat of Hamilton County, in the district aforesaid, at the Court House at McLeansboro, made, executed and delivered by S. B. Stelle, then County Judge of Hamilton County, Illinois, and J. W. Marshall, then Clerk of the County Court of said county, among others, its six (6) county bonds, numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871, and issued to the Southeastern Railway Company, or bearer, and were payable in the City and State of New York twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent per annum, payable semi-annually on the first days of January and July of each year where the State Treasurer of the State of Illinois pays the interest and debt of said state, in the City of New York.

That said bonds were registered by the Auditor of the State of Illinois, November 1, 1871, and with coupons evidencing the interest, attached, so made executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That Bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

No. 46. BOND OF $1,000.00.

HAMILTON COUNTY.

Interest seven per cent. Payable semi-annually.

STATE OF ILLINOIS.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company, or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum said county for value received, promises to pay to said company, or bearer, in the City and State of New York, twenty years after date, payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton with interest thereon, from the date hereof at the rate of seven per cent per annum, payable semi-annually on the first days of January and July, in each year on the presentation and surrender, at the place in the said City of New York where the Treasurer of the State of Illinois pays the interest and debt of the said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in the said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act

of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An Act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the County Judge of the said county, under the order of the County Court of said county, signing his name hereto, in open Court, and by the Clerk of said Court, in obedience to the order thereof attesting the same and affixing hereto the seal of the said Court, in open Court.

Done at the Court House at McLeansboro,
[Seal] in said County, on this, the 23d day of October,
Anno Domini 1871.

T. B. STELLE,
County Judge of Hamilton County, Ill.

Attest:

J. W. MARSHALL,
Clerk the County Court of Hamilton County, Ill.

Endorsed:

AUDITOR'S OFFICE, ILLINOIS.

Springfield, Nov. 1, 1871.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An Act to fund and provide for paying the railroad debts of Counties, Townships, Cities and Towns," in force April 16, 1869.

In testimony whereof, I have hereunto
[Seal] subscribed my name and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants at $35.00 each, series 31 to 40, inclusive, dated Oct. 23, 1871, and due January and July of 1887, 1889, 1890, 1891, and January 1, 1892, representing the interest on each of soid bonds at the rate of seven per cent per annum and payable in the City of New York aforesaid. That said coupons were all an exact facsimile of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they became due.

Coupon serial No. 40, on bond No. 46, due January 1, 1892, in the words and figures following, to-wit:

$35.00. $35.00.

McLeansboro, Hamilton County, Illinois.

October 23, 1871.

The County of Hamilton, in the State of Illinois, promises to pay the sum of Thirty-five Dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on Bond No. 46, for One Thousand Dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the City of New York.

J. W. MARSHALL, Clerk.

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount, save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in the said County at an election held pursuant to law, November 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the railroad debts of Counties, Townships, Cities and Towns." And that said six (6) bonds were duly registered by the State Auditor as aforesaid, November 1, 1871, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an invest-

ment in the usual course of business, for a good and valuable consideration, somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, towit: on the same day and year last aforesaid, and at the County and District aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898 at the County and District last aforesaid, was indebted to the plaintiff in the sum of Twenty Thousand Dollars ($20,000), of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to said defendant; and that a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received, due and for use of said plaintiff; and being so indebted, said

defendant in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to-wit: upon the same day and year, and at the County and District aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff, then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of Twenty Thousand Dollars ($20,000) lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of Twenty Thousand Dollars ($20,000) and therefore said plaintiff brings this, her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton,
State of Illinois.

To Harriet M. Zane, Dr.—

To goods, wares and merchandise sold and delivered	$20,000
To money lent and advanced	20,000
To money paid out and expended	20,000
To money had and received	20,000
To balance due on account	20,000
To interest forborne due plaintiff	20,000

A general demurrer to plaintiff's declaration was filed, as follows, to-wit:

United States of America, } ss.
Southern District of Illinois. }

IN THE UNITED STATES CIRCUIT COURT.

JANUARY TERM, A. D. 1899.

Harriet M. Zane
vs.
County of Hamilton.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed.)

J. R. WILLIAMS and
J. M. HAMILL,
Attorneys for Defendant.

Declaration endorsed as follows: No. 8545. Circuit Court, January Term, A. D. 1899. Harriet M. Zane, plaintiff, vs. The County of Hamilton, defendant. Declaration. Filed November 7, 1898. James T. Jones, Clerk.

Demurrer to the declaration endorsed: Harriet M. Zane vs. County of Hamilton. Demurrer to Declaration. Filed January 6, 1899. James T. Jones, Clerk.

SECOND.

The Court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration, but denies that under the law applicable to this case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then County Judge, S. B. Stelle, and its then County Clerk, J. W. Marshall, at its Court House in McLeansboro, the county seat of defendant, Hamilton County, Illinois, did make, execute and deliver among others, its six (6) county bonds numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum evidenced by coupon interest notes for $35.00 each and payable January and July of each year.

That said bonds were dated October 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the City and State of New York, twenty years from date or at any time after five years at the option

of the county, with seven per cent interest January and July 1st of each year where the State Treasurer of the State of Illinois pays the interest and debt of said State in the City of New York.

That said bonds were registered by the then State Auditor November 1, 1871, as will fully appear by copy of a bond, No. 46, *supra*.

That said bonds were a part of an issue of two hundred of like tenor and amount and issued under and by virtue of the authority given by a majority of all legal voters of said County, by their votes, at an election held in said County, pursuant to law, on the 3d day of November, 1869, and also by authority given by the provisions of an Act of the General Assembly of the State of Illinois, in force March 10, 1869, entitled, "An Act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An Act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

The bonds were issued in part payment of a subscription made by said County, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars ($200,000.)

Plaintiff avers that she purchased the six bonds and coupons mentioned in the declaration as an investment in the

usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts are all admitted by the demurrer and make the plaintiff a bona fide holder and owner for value of the bonds and coupons mentioned in the declaration.

"*An act to incorporate the St. Louis & Southeastern Railroad Company.*" *In force March 10, 1869. Pages 239-245, Private Laws, State of Illinois, Vol. 3, 1869.*

Sec. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they may think proper, payable in bonds, lands or right of way, and subject to such agreements and stipulations, as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Provided, that no subscriptions shall be made by any County Court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the County Court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be

called, conducted and returns made, canvassed and published in the usual manner of conducting elections in said County, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, upon which is printed or written "For Subscription" or "Against Subscription," and if a majority of the ballots cast at such election shall be "For Subscription," it shall be the duty of the County Court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stockholders of said company.

Sec. 16. Elections may be held in any such county, incorporated city or town or township upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the County Clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding of such election, it shall be the duty of the County Clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such

township, city or town, setting forth the amount of stock proposed to be taken by any such township, city or town, and specifying the time for holding such election, it shall be the duty of the supervisor of every such township and the duty of the clerk of any such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the same places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For Subscription," or "Against Subscription," and if a majority of the votes cast at such election by voters voting on that subject, shall be "For Subscription," it shall be the duty of the County Court or Board of Supervisors of every such county, the Supervisor and Clerk of such township and the corporate authorities of such city or town to subscribe at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount on the stock so subscribed of the bonds of such county, township, city or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same at a rate not exceeding eight per cent, payable annually or semi-annually;

which said bonds shall be of such denomination and the principal and interest payable at such place or places, whether within or without the State, as may be agreed upon: Provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State of County purposes, it shall not be necessary for the several boards of registry to make a new register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and County officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters' (votes) are taken at any general election.

Sec. 17. Any incorporated city, town or township, or any county, through or near which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such term and conditions as may be agreed upon by and between said city, town, township or county, and the said railway company to secure the building of said railway: Provided, that the authorities of said city, town, township or county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election, held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places—the amount proposed to be donated being stated in the order for such election, and the tickets voted at such

election shall have written or printed on them "For Donation" or "Against Donation;" and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town or township, or county, to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railway company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

Sec. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually or semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

Sec. 20. And the said company may lease or purchase, upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted, as part of their main line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining

to said road, or part of road, in the right of way, construction, maintenance and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of the company the One Hundred Thousand Dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. *And the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this company the Two Hundred Thousand Dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this company the One Hundred Thousand Dollars, or any part thereof, voted by a majority of the legal voters of said county to the Mt. Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties:

Provided, that nothing herein shall be so construed as to prevent either of the counties mentioned in this section subscribing any other or larger amounts to the capital stock of this company than the amounts mentioned in this sec

Sec. 21. *This Act shall be deemed a Public Act* and *shall be liberally construed* for all purposes therein expressed and declared, and shall be in force from and after its passage.

THIRD.

The Court erred both in not holding the act of March 10, 1869, constitutional and in not following the decisions of this honorable Court on that question and in not giving judgment for the plaintiff for the amount found due on her bonds and coupons.

Your petitioner represents that the constitutionality of the Act of Incorporation of the Railroad Company of March 10, 1869, is, under the pleadings, the all important question in this case.

This act was held as granting ample legislative authority for the issue of these bonds in the decree of the Federal Circuit Court in the Jackson case June 5, 1881, and this decree was affirmed in the Austin vs. Hamilton County case, 22 C. C. A. 132, Oct. 5, 1896, and that it was not repugnant to the constitution of the State of Illinois of 1848.

The State Court decision in the Hamill case of June 16, 1888, 134 Ill. 666, is the only other case where the constitutionality of this act was decided.

Our contention is that the Appellate Court in the case at bar should, on this question, have followed the decision in the Jackson case and the decree of Judge Treat of June 5, 1881, and the decisions on this question in the Austin case of October 5, 1896.

First, because this whole issue of $200,000 of bonds were all issued under the same act of March 10, 1869, by the same officials of the county defendant of same date, tenor and effect, to the same railroad company, for the same purpose, and regis-

tered at the same time by the State Auditor. It follows of *necessity*, that on the one question of legislative authority, if the act was constitutional and Jackson's 105 bonds were legally issued under it, the other 95 bonds *must have had equal* legislative authority for their issue.

And, second, because the question involved was "one which follows among the general principles and doctrines of Commercial Jurisprudence"—"upon which it is the duty of the Federal Courts to form an independent judgment and in respect of which they are under no obligation to follow implicitly the conclusions of any other Court, however learned or able it may be."

Pana vs. Bowler, 107 U. S. 541 and citations.

In that case the United States Supreme Court overruled a State Court decision on an analogous case from Illinois, and state the rule as follows, to-wit: "When the construction of a State Constitution or law has become settled by the decision of the State Courts, the Courts of the United States will, as a general rule, accept it as evidence of what the local law is." Ibd. 540.

But this was not the rule in the Illinois Supreme Court at the time of the Hamill decision, but the reverse.

This very same question and the consideration of Illinois cases deciding the constitutionality of exactly similar acts is carefully reviewed in Unity vs. Burrage, 103 U. S. 455-559, deciding such acts to be *not local* and *private, but public acts.*

Up to this date, and long afterwards, the State Supreme

Court supported our contention, that this act of March 10, 1869, and similar acts, as to title, were not repugnant to the State Constitution of 1848.

Belleville, etc., Railroad Co. vs. Gregory, 15 Ill. 20.

Firemen'sBenevolent Association vs. Lounsbury, 21 id. 511; Schuyler County vs. People, 25 id. 181; O'Leary vs. County of Cook, 28 id. 534; Eslinger vs. Boncan, 51 id. 95; People vs. Brisleu, 80 id. 423; Beinz vs. Weber, 81 id. 288; Johnson vs. The People, 83 id. 431; Supervisors vs. C., B. & Q. R. R. Co., 44 id. 229; City of Ottawa vs. The People, 48 id. 233.

In construing an act to incorporate the Jacksonville & Southeastern Railway Company, the State Supreme Court say in City of Virden vs. Allen, 107 Ill. 506, October term, 1883: "*If there is, or can be, anything settled in this Court, it is that such power could be granted and exercised under the constitution of 1848, and it has been repeatedly held, and it is equally well settled, that when a charter to authorize the construction and operation of a railroad confers power upon Municipalities, it is germane to such charters, and does not constitute a different subject from that of power to construct the road; that it is but a means to the end, and it is but a part of the whole power, and is properly conferred. The voting of stock and issuing of bonds to pay for same, are most essential means to the end of building railroads.*"

It will thus be seen, that "*the Rule*" of Construction of such Acts of Incorporation of Railroad companies in Illinois

by its State Supreme Court, up to the Hamill case in June, 1888, was that such Acts were *not repugnant* to the Constitution of Illinois of 1848.

The decisions of this honorable court support overwhelmingly our contention.

> Pana vs. Bowler, 107 U. S., 103 U. S., Unity vs. Burrage, 103 U. S. 456-460; San Antonia vs. Mehaffy, 96 U. S. 315; Jonesboro City vs. Cairo & St. Louis R. R. Co., 100 U. S. 192; Mount Clair vs. Ramsdel, 107 U. S. 147.

It seems to us that *The Rule* of Construction as to the Constitutionality of the Act of March 10, 1869, and similar Acts by the State Supreme Court of Illinois is, that such acts are constitutional. The one exception seems to be the Hamill case.

But if this were not so under the doctrines of Commercial Jurisprudence, it would be the duty of the Federal Courts to form an independent opinion, or follow the decisions of this court, which certainly sustain our contention as shown above. This question of following State Court decisions is fully discussed in Burgess vs. Seligman, 107 U. S. 33-34. Where the Court say, "But where the law *has not been thus settled*, it is the right and duty of the Federal Courts to exercise their own judgment; *as they always do in reference to the doctrines of Commercial law and general Jurisprudence*."

It seems to us there can be no doubt as to the Constitutionality of the Act of March 10, 1869, under which the bonds were issued. If so, it is the only question in the case, and

decisive, as under the averments of the declaration are admitted by the Demurrer. The Petitioner is a bona-fide holder of her bonds and coupons, purchased long before there was any default in payment of interest, or any litigation concerning the validity of the bonds, and under the admitted averments is entitled to recover.

All the Equities are with the Petitioner and *ought to have great weight* in the court of last resort.

Your Petitioner further represents that the decision of the Appellate Court is at variance with the State Court decisions, and the decision of other states, and other United States Appellate Courts, and this honorable court on the great question of the Constitutionality of the Act of March 10, 1869, conferring the Legislative power to issue the bonds as shown above.

These numerous great variances, and errors of law manifest in the decision of the Appellate Court in the case at bar can now only be rectified and harmonized, and justice be done your Petitioner in this honorable court of last resort.

Your Petitioner therefore further shows that she has filed herewith and made a part of this Application, her Assignments of Error and variances and that she has also caused a certified copy of the transcript of record in this case to be made, and that the same is filed herewith as a part thereof.

Whereupon, your Petitioner respectfully prays that this honorable court may be pleased to grant the Writ of Certiorari, requiring the case of Harriet M. Zane vs. The County of Hamilton, No. 675, October Term, A. D. 1899, United States

Circuit Court of Appeals for the Seventh Circuit, to be certified to this Honorable Court for its review and determination, and your Petitioner will ever pray, etc.

HARRIET M. ZANE, *Petitioner.*

By Geo. A. Sanders

Her Solicitor.

To Messrs. J. R. Williams and J. M. Hamill,

Solicitors for Respondents:

Please take notice that on Monday, the 5th day of August, A. D. 1901, at 12 o'clock noon, or as soon thereafter as counsel can be heard, the undersigned will submit to the Supreme Court of the United States, a petition for a Writ of Certiorari, of which the foregoing is a true and complete copy.

.....

Solicitor for Harriet M. Zane,

Petitioner.

Dated, May 18, 1901.

Service of the foregoing Notice and Petition is hereby acknowledged, this —— day of May, A. D. 1901.

.....

.....

Solicitors for Respondent.

Office 115

14714

Brief of Sanders for Petitioner.

Office Supreme Court U. S.
FILED
JAMES H. McKENNEY,
Clerk.

Filed June 10, 1901.

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Brief in support of Application for Writ of Certiorari.

[redacted]

BRIEF ON BEHALF OF PETITIONER.

GEORGE A. SANDERS,
Attorney for Petitioner.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D. 1901.

HARRIET M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Brief in support of Application for Writ of Certiorari.

BRIEF OF PETITIONER.

STATEMENT OF THE CASE.

This is an action to recover on bonds and coupons issued by the defendant, Hamilton County, Illinois, in part payment of a subscription to the stock of the St. Louis & Southeastern Railroad Company as mentioned in the declaration.

The declaration is in the usual form, to which the defendant filed a general demurrer. Upon a hearing of the demurrer, the Court sustained the demurrer and gave judgment for the defendant for costs. The plaintiff elected to stand by her declaration and took a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit.

The demurrer admits the facts as stated in the declaration; but denies the right of the plaintiff to recover under the law applicable to the case.

The facts are sufficiently stated in the declaration following the assignment of errors.

The question involved is simply whether there was legislative authority for the issue of the bonds and coupons in the case and mentioned in the declaration.

ASSIGNMENT OF ERRORS.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above entitled cause in this:

First. The Court erred in sustaining defendant's demurrer to plaintiff's declaration and giving judgment for defendant on the demurrer for costs.

The plaintiff in this case elected to stand by her declaration, which is in the words and figures following, to-wit:

DECLARATION.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of the County of Hamilton, in the

State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the Southern District of Illinois, defendant in this suit, who has been summoned, etc., to answer the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county seat of Hamilton County, in the district aforesaid, at the court house in McLeansboro, made, executed and delivered by S. B. Stelle, then County Judge of Hamilton County, Illinois, and J. W. Marshall, then clerk of the County Court of said county, among others its six (6) county bonds, numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent per annum, evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, payable at any time before they become due after five years, with interest at the rate of seven per cent per annum, payable semi-annually on the first days of January and July of each year where the State Treasurer of the State of Illinois pays the interest and debt of said State, in the City of New York. Said bonds were registered by the Auditor of the State of Illinois, Nov. 1, 1871, with coupons attached evidencing the interest, so made, executed and deliv-

ered, payable to the St. Louis & Southeastern Railway Company, or bearer, and were exact copies of each other, except as to their serial numbers. The bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

No. 46. BOND OF $1,000.00.

HAMILTON COUNTY.

Interest seven per cent. Payable semi-annually.

STATE OF ILLINOIS.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company, or bearer, in the sum of One Thousand Dollars, lawful money of the United States of America, which sum said county for value received, promises to pay the said Company, or bearer, in the City and State of New York, twenty years after date, payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton, with interest thereon, from the date hereof at the rate of seven per cent per annum, payable semi-annually on the first days of January and July in each year, on the presentation and surrender, at the place in said City of New York, where the Treasurer of the State of Illinois pays the interest and debt of said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said County, by their votes, at an election held in said County, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, A. D. 1869, entitled, "An act to fund and provide for the payment of the Railroad debts of Counties, Townships, Cities and Towns."

This bond is issued in part payment of a subscription made by said County, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company, in the sum of Two Hundred Thousand Dollars.

IN TESTIMONY WHEREOF, the said County of Hamilton has executed this Bond, by the County Judge of said County under the order of the County Court of said County, signing his name hereto, in open Court, and by the Clerk of said Court, in obedience to the order thereof, attesting the same and affixing hereto the seal of the said Court, in open Court.

Done at the Court House at McLeansboro,
[Seal] in said County, on this, the 23d day of October, Anno Domini 1871.

T. B. STELLE,
County Judge of Hamilton County, Ill.

Attest:

J. W. MARSHALL,

Clerk the County Court of Hamilton County, Ill.

ENDORSED.

AUDITOR'S OFFICE, ILLINOIS.

Springfield, Nov. 1, 1871.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An act to fund and provide for the paying the railroad debts of Counties, Townships, Cities and Towns," in force April 16, 1869.

In Testimony Whereof, I have hereunto

[Seal] subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,

Auditor of P. A.

And the plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants A. $35.00 each, series 31 and 40 inclusive, dated Oct. 23, 1871, representing the interest on each of said bonds at the rate of seven per cent per annum and payable in the city of New York, exact copies of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they become due.

Coupon serial No. 40, on bond No. 46, due 1892, in the words and figures following, to-wit:

"$35.00. $35.00.

McLeansboro, Hamilton County, Illinois.

January 1st, 1872.

The County of Hamilton, in the State of Illinois, promises to pay the sum of Thirty-five Dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on Bond No. 46 for One Thousand Dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the City of New York.

J. W. MARSHALL, Clerk."

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount save as to dates of issue and registration and numbers of bonds as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St. Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in said county at an election held *pursuant to law* November 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An act to fund and provide for the payment of the railroad debts of Counties, Townships, Cities and Towns." And that said six (6) bonds were duly registered by the State Auditor as aforesaid, November 1, 1871, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an investment in the usual course of business for a good and valuable consideration, somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of the said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, to-wit: on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the first day of October in the year of Our Lord 1898, at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to the said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for

money by said defendant before that time had and received, due and for use of said defendant; and being so indebted said defendant in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to-wit: upon the same day and year, and at the County and District last aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars ($20,000), lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to-wit: on the same day and year and at the same place aforesaid, undertook and then and there faithfully promised to pay the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but the defendant has hitherto altogether refused and still does refuse to the damages of said plaintiff of twenty thousand

dollars ($20,000) and therefore said plaintiff brings this, her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton,
State of Illinois.

To Harriet M. Zane, Dr.—

To goods, wares and merchandise sold and delivered. $20,000
To money lent and advanced..... 20,000
To money paid out and expended..... 20,000
To money had and received..... 20,000
To balance due on account..... 20,000
To interest forborne due plaintiff..... 20,000

A general demurrer to plaintiff's declaration was filed, as follows, to-wit:

United States of America, } ss.
Southern District of Illinois. }

IN THE UNITED STATES CIRCUIT COURT.
JANUARY TERM, A. D. 1899.

Harriet M. Zane
vs.
County of Hamilton,

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed.)
J. R. WILLIAMS and J. M. HAMILL,
Attorneys for Defendant.

Declaration endorsed as follows:

No. 8545, Circuit Court, January Term, A. D. 1899.

Harriet M. Zane, Plaintiff,

vs.

The County of Hamilton, Defendant.

DECLARATION.

Filed November 7, 1898.

James T. Jones, Clerk.

Demurrer to the declaration endorsed.

Harriet M. Zane
vs.
County of Hamilton. } Demurrer to Declaration.

Filed January 6, 1899.

James T. Jones, Clerk.

Second: The Court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration but denies that under the law applicable to the case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then County Judge, S. B. Stelle, and its then County Clerk, J. W. Marshall, at its Court House in McLeansboro, in the county seat of defendant, Hamilton County, Illinois, did make, execute and deliver among other, its six (6) county bonds numbered 45, 46, 47, 48, 49 and 50, commonly called railroad aid

bonds, for $1,000 each, bearing interest at the rate of seven per cent per annum evidenced by coupon interest notes of $35.00 each and payable January and July of each year.

That said bonds were dated October 23, 1871, and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the City and State of New York, twenty years from date or at any time after five years at the option of the County, with seven per cent interest, January and July first of each year, where the State Treasurer of the State of Illinois pays the interest and debt of said State in the City of New York. That the said bonds were registered by the then State Auditor November 1, 1871, as will fully appear by copy of a bond, No. 46, supra.

That said bonds were a part of an issue of two hundred of like tenor and amount and issued under and by virtue of the authority given by a majority of all the legal voters of said County, by their votes, at an election held in said County, pursuant to law, on the 3d day of November, 1868, and also by authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16, 1869, entitled, "An act to fund and provide for the payment of railroad debts of Counties, Townships, Cities and Towns," and were issued in part payment of a subscription made by said County, under and by virtue of the authority

aforesaid to the capital stock of said St. Louis & Southeastern Railway Company in the sum of two hundred thousand dollars ($200,000).

Plaintiff averred that she purchased the six bonds and coupons mentioned in the declaration as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts averred in the declaration are all admitted by the demurrer and make the plaintiff a bona fide holder and owner of the bonds and coupons mentioned in the declaration.

"*An act to incorporate the St. Louis & Southeastern Railroad Company.*" In force March 10, 1869, granting authority for the issue of the bonds.

Pages 239-245, Private Laws, State of Illinois, Vol. 3, 1869.

Sec. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they may think proper, payable in bonds, lands and right-of-way, and subject to such agreements and stipulations as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Pro-

vided, that no subscriptions shall be made by any County Court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the County Court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be called, conducted and returns made, canvassed, and published in the usual manner of conducting elections in said county, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, opon which is printed or written "For Subscription," or "Against Subscription," and if a majority of the ballots cast at such election shall be "For Subscription," it shall be the duty of the County Court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stockholders of said company.

Sec. 16. Elections may be held in any such county, incorporated city or town or township upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the County Clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding such an election, it shall be the duty

of the County Clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city or town, signed by twenty-five legal voters of any such township, city or town, setting forth the amount of the stock proposed to be taken by any such township, city or town and specifying the time for holding such election, it shall be the duty of the Supervisor of every such township and the duty of the Clerk of every such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For Subscription," or "Against Subscription," and if a majority of the votes cast at such election, by voters voting on that subject, shall be "For Subscription," it shall be the duty of the County Court or Board of Supervisors of every such county, the Supervisor and Clerk of such township and the corporate authorities of such city or town to subscribe, at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount as the

stock so subscribed of the bonds of such county, township, city or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same, at a rate not exceeding eight per cent, payable annually or semi-annually; which said bonds shall be of such denomination and the principal and interest payable at such place or places, either within or without the State, as may be agreed upon: Provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State and County purposes, it shall not be necessary for the several Boards of Registry to make a register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and County officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters' (votes) are taken at any general election.

Sec. 17. Any incorporated city, town or township, or any county, through or near, which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such terms and conditions as may be agreed upon by and between said city, town or township or county, and the said railway company, to secure the building of said railway: Provided, that the authorities of said city, town, township or

county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election, held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places, the amount proposed to be donated being stated in the order for such election, and the tickets voted at such election shall have written or printed on them "For Donation" or "Against Donation," and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town, township or county to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railroad company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

Sec. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually and semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

Sec. 20. And the said Company may lease or purchase upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted as part of their main line; and, by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road, or part of road, in the right-of-way, construction, maintenance and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of this Company the one hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said County to the Shawneetown Branch of the Illinois Central Railroad Company. *And the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this Company the two hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said County to the Shawneetown Branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this Company the one hundred thousand dollars or any part thereof, voted by a majority of the legal voters of said county to the Mount Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties: Provided, that nothing herein shall be so construed as to prevent either of the counties mentioned in this section, subscribing any other or larger

amounts to the capital stock of this Company than the amounts mentioned in this section.

Sec. 21. This Act shall be deemed a public act and shall be liberally construed for all purposes therein expressed and declared, and shall be in force from and after its passage.

Approved March 10, 1869.

Third. The Court erred in not holding the Act of March 10, 1869, constitutional, and in not rendering judgment for the plaintiff for the amount due on her bonds and coupons as mentioned in the declaration.

POINTS AND ARGUMENT.

There was ample legislative authority for the issue of the bonds and coupons in controversy, under the Act of March 10, 1869. The declaration avers the citizenship of the plaintiff as that of another state. Gives copy of one of the bonds and coupons, and avers the others are of similar tenor and effect, states when, and for what purpose, the bonds were issued, rate of interest, and when and where payable. That they were made, executed and delivered by the duly authorized officials of the defendant county in part payment of a subscription for stock of the St. Louis & Southeastern Railway Company, to that Company, or bearer, under and by virtue of the authority of a majority of all the legal voters in said County, by their votes at an election held in said county, *pursuant to law*, on the 3d day of November, 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An Act to in-

corporate the St. Louis & Southeastern Railway Company," and under the provisions of an Act of the General Assembly of the State of Illinois in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of the railroad debts of cities, counties, townships and towns."

That they were issued in part payment of a subscription made by said county under and by virtue of the authority aforesaid to the capital stock of said St. Louis & Southeastern Railway Company, the whole subscription of the County being $200,000.

That the bonds were duly registered by the State Auditor November 1, 1871, under the Act of April 16, 1869.

That the plaintiff purchased the bonds and coupons for an investment in the usual course of business for a good and valuable consideration somewhere on or about February 1, 1874, and long before there was any default in the payment of the interest or principal of the bonds and without any notice whatever of any supposed want of legislative power, or irregularity in their issue.

The recitals on the bond are as follows: "This bond is one of two hundred of like tenor and amount, of same issue, and is issued under and by virtue of the authority given by a majority of all the legal voters in said County by their votes at an election held in said county *pursuant to law* on the 3d day of November, A. D. 1868, and also by the authority given by the provisions of an Act of the General Assembly of the State of Illinois in force March 10, 1869, entitled "An Act to incorporate the St. Louis & Southeastern Railway Company."

"This bond is also issued under the provisions of an Act of the General Assembly of Illinois in force April 16, A. D. 1869, entitled "An Act to fund and provide for the payment of railroad debts of cities, towns, townships and counties."

"The bond is issued in part payment of a subscription made by said county under and by virtue of the authority aforesaid to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of Two Hundred Thousand Dollars."

All the facts averred in the declaration are admitted by the general demurrer and the bonds and coupons must be held valid obligations of the defendant if there was legislative authority for their issue.

It is now held by the Federal and State Courts that no legislative authority to issue bonds is conferred upon public corporations by the Registration Act of April 16, 1869.

This being conceded, we think there is ample legislative authority for the issue of the bonds in the Act to incorporate the St. Louis & Southeastern Railway Company, in force March 10, 1869, copied under assignment of errors, supra.

Sections 15, 16 and 17 are full and explicit as to terms of subscription to the stock of the Railroad Company, terms of issue and payment of the bonds and when and how elections are to be called and held to vote for the subscription to the stock and the issue of the bonds in payment thereof.

But Section 20 of said Act gives *express authority* so to do in the following language: "And the said Company may lease or purchase upon such terms as may be agreed upon, any other railroad or part of railroad, either wholly or partially

constructed, which may constitute or be adopted as part of their line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road or part of road in the right-of-way, construction, maintenance, and working thereof. And the County Court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of this Company the One Hundred Thousand Dollars or any part thereof heretofore voted by a majority of the legal voters of said County to the Shawneetown branch of the Illinois Central Railroad Company. And *the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this Company the Two Hundred Thousand Dollars, or any part thereof heretofore voted by a majority of the legal voters of said County to the Shawneetown branch of the Illinois Central Railroad Company.* And the County Court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this Company, the One Hundred Thousand Dollars or any part thereof voted by a majority of the legal voters of said County to the Mount Vernon Railroad Company."

"And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties: Provided, that nothing herein shall be so construed as to prevent either of the Counties mentioned in this section subscribing any other or larger amounts to the capital stock of this Company than the amount mentioned in this section.

"This act shall be deemed *a Public Act* and shall be liber-

ally construed for all purposes therein expressed and declared and shall be in force from and after its passage.

Approved March 10, 1869."

We think there can be no doubt that there is ample legislative power in the Act of Incorporation of the St. Louis & Southeastern Railroad Company for the issue of the bonds in question and especially under Section 20 in that Act. This construction has been given to this Act in a number of cases.

II.

Act of incorporation of March 10, 1869, not in violation of the Constitution of 1848. Counsel for the defendant strenuously insists that the Act has been held in violation of Section 23, Article 3, of the Illinois Constitution of 1848, which provides that "*no private or local law which may be passed by the General Assembly shall embrace more than one subject and that shall be expressed in the title.*"

Constitution of Illinois of 1848, Sec. 23, Article 3. See Revised Statutes of Ill., Hurd, 1897, page 39.

The first adjudication concerning this issue of bonds was in a chancery proceeding commenced by the County of Hamilton to restrain and enjoin the levy and collection of taxes to pay interest on these bonds. That case was removed to the Federal Court of the Southern District of Illinois by Walter Jackson, who filed a cross bill and upon a hearing of the bill and cross bill, Jackson's bonds 105 as numbered in his cross bill, were held "valid, legal and binding obligations of the said County." The original bill was dismissed at the cost of the

complainaint and this decree, dated June 5, A. D. 1881, was never appealed from, reversed, or in any manner set aside or annulled.

Then on June 16, 1888, a decision in an *ex parte* proceeding (unknown bondholders being served only by newspaper publication) was rendered by the State Supreme Court in the case of the People vs. Hamill, 134 Ill., 666, holding this issue of $200,000 of bonds void for want of legislative power to issue them. That the Act of March 10, 1869, was in violation of Sec. 23, Article 3 of the Constitution of 1848, and therefore conferred no power for their issue.

On October 5, 1896, the United States Circuit Court of Appeals rendered a decision in the case of Austin vs. Hamilton County, 22 C. C. A. 128, 79 Fed. 208, in which other bonds and coupons of this issue, than those mentioned in the decree of June 5, 1881, were involved.

That Court, as we understand that decision, affirmed the decision of the Court below on the ground that the plaintiff *was not a bona fide holder of some of the bonds and coupons* involved, having presumably purchased them after a knowledge of the decision of the State Supreme Court in the case of The People vs. Hamill, 134 Ill., 666.

As to the question whether the Act of Incorporation of the Railroad Company of March 10, 1869, granted the power because the section expressly granting power to defendant county was not embraced in the title and was not germane to the subject of the Act in which it is found, the Appellate Court says, in the Austin case 22, C. C. A., page 131, latter

part, "But as between the County, which brought the suit, and Jackson, who, after being allowed to intervene, was made a defendant by name and not only answered denying the allegations of the bill; but filed a cross bill affirming the validity of the bonds. *There can be no question that the decree is conclusive*, and that the plaintiff, as assignee of Jackson, was entitled to the judgment awarded him. To that extent the case is essentially the same as that adjudged in that Franklin Co. vs. German Savings Bank, 142 U. S., 99. 12 Sup. Ct. 147. Here, as there, the validity of the bonds was put directly in issue by the pleadings and was determined adversely to the County. Here, it is true, the findings say: That the constitution of Section 20 of the Act of Incorporation of the Railroad Company "was not drawn in question, passed upon, or decided" in the chancery cause, *but that is a mistaken conclusion of law, rather than a finding of fact*, under the issues joined, both upon the bill and the cross bill, the validity and force of that section, equally with any other enactment referred to in the recitals of the bonds, were *necessarily within the scope of inquiry, whether actually considered or not, and therefore were determined by the decree, in which, according to the finding, Jackson's bonds were specified by number and all declared valid. The question of the validity of these bonds is not open to reconsideration.*"

As we understand the decision of this Court cited supra it is that the decision of the decree must stand and that the Act of March 10, 1869, incorporating the Railroad Company is *not repugnant* to the Constitution of 1848. Both the title

to the Act and Section 20 granting express power to issue the bonds *must have been or might have been construed by the Court* in the decree, and as this Court say: *"Were determined by the decree."*

The leading question determined by the State Supreme Court in People vs. Hamill, *supra*, was whether the Act of March 10, 1869, incorporating the Railroad Company, granting power to issue the bonds was in violation of the Constitution of 1848. The decree of the Federal Court of June 5, A. D. 1881, *holds that it was not.* The Appellate Court, as we understand in the citations, *supra, affirms that decision, and sustains the decree*, when it says, that question equally with others "were determined by the decree."

All the Federal decisions in four cases have held Jackson's bonds valid. His bonds being valid, all other bonds of the same issue of $200,000 issued at the same time, by the same officers, of the same tenor and effect, for the same purpose, by virtue of the same vote of the people, and under the same Act of March 10, 1869, *must be valid as far as legislative authority to issue them is concerned.* Since the Constitutional question applies to all bonds of the whole issue, and if the Act of March 10, 1869, is not in violation of the Constitution of 1848, as to Jackson's bonds, it cannot be so as to any of the other bonds of the same issue.

The case of Austin vs. Hamilton County, *supra*, is not therefore *res adjudicata*, as to the case at bar, as is claimed by the counsel for the defense, since the only question involved under the demurrer is the constitutionality of the Act of March 10, 1869.

Counsel for the defense insist that the decision in the case of Bolles et al. vs. Hamilton County, 20 C. C. A. 401, is *res adjudicata* as to the case at bar. An examination of the case will show that the counsel's position is untenable. For the Appellate Court say: "There is no special finding of facts, and in other respects also the record is the same as in the case of Woodbury vs. City of Shawneetown, 20 C. C. A. 400, 74 Fed. 205, *for reasons there explained no question is presented for consideration.*"

In the Woodbury vs. City of Shawneetown case, *supra*, the Appellate Court held that there being *no special findings of fact, only a general finding*, "No question is presented upon any action or ruling of the Court in the progress of the trial of the cause and the finding not being special, *there is presented here no question of the sufficiency of the facts found to support the judgment.*" And that the bill of exceptions does not purport to contain *all* the evidence and while it sets out matter of record and other facts as having been agreed upon, it does not show *all* the facts are stipulated nor that the case is submitted upon the facts stated as "an agreed case."

The parties to those cases are different from the parties in the case at bar and we cannot believe that a decision of a Court of last resort on questions of practice can be *res adjudicata* as to the case at bar when the Court says in the decision, "*No question is presented for consideration.*"

As we understand these decisions the Appellate Court never passed upon the only question presented under the demurrer in the case at bar, to-wit: the constitutionality of the

Act of March 10, 1869, save in the Austin vs. Hamilton County case where it sustains the decree of the Federal Court below of June 5, 1881, when it says, this question equally with others "were determined by the decree."

III.

Counsel for the defense insists that there was no law granting any power whatever to issue the bonds in controversy in existence when the vote was taken.

There is now no question, under the decisions of the Federal Courts but that the Legislature had power to *ratify, confirm and legalize the exercise of any power by public corporations*, which it might have authorized in the first instance.

"The Legislature in the enabling Act of March 10th, 1869, simply gave effect to the wishes of the people, as expressed in the customary mode for ascertaining the popular will," says the United States Supreme Court in Bolles vs. Brimfield, 120 U. S., 759 and 764, October Term, 1886, Illinois case. The same doctrine is sustained in Anderson vs. Santa Anna, 116 U. S., 364 and citation. Illinois case.

In Grenada County vs. Brogden, 112 U. S., 271, the Court says: "Since what was done in this case by the constitutional majority of qualified electors and by the Board of Supervisors of the County would have been legal and binding upon the County had it been done under legislative authority previously conferred, it is not conceived why subsequent legislative ratification is not, in the absence of constitutional restrictions, upon such legislation, equivalent to original authority. Citations.

IV.

The Act of March 10th, 1869, incorporating the St. Louis & Southeastern Railroad Company not unconstitutional by reason of its title; nor is it a local or private act.

Section 23, of Article 3, of the Constitution of 1848 provides that "*No private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title.*"

Illinois Revised Statutes, Hurd's 1897, Article 3, Section 23, page 39.

The ex parte decision by the Supreme Court of the State in the People vs. Hamill, supra, was based upon the unconstitutionality of the Act of March 10th, 1869, by reason of its being a local private Act, and embracing more than one subject, and that not expressed in its Title.

In Unity vs. Burrage, 103 U. S., 447, October term, 1880, an Illinois case from the Southern District of Illinois, this whole question is ably discussed and many State cases considered.

On page 458, the Court say: "The Supreme Court of Illinois, in the case of the Belleville, etc., Railroad Company vs. Gregory (15 Ills., 20), has decided that 'An Act to incorporate the Belleville & Illinois Railroad Company,' and which contained a section which authorized the City of Belleville and the County of St. Clair to subscribe for stock in the Company, was not in violation of the Section of the State Constitution under consideration."

Fireman's Benevolent Association vs. Lounsbury, 21 Ill., 511.

Schuyler County vs. People, 25 Id., 181.

O'Leary vs. County of Cook, 28 Id., 534.

Erlinger vs. Boneau, 51 Id., 95.

People vs. Brislin, 80 Id., 423.

Binz vs. Weber, 81 Id., 288.

"*The Act cannot, therefore, be held to be open to the constitutional objection*," even under the State Court decisions.

In San Antonio vs. Mehaffy, 96 U. S., 315, the Court say: "This identical question arose in San Antonio vs. Lane, *supra*. It was then unanimously held by the Court that 'When an Act of the Legislature expresses in its title the object of the Act, the title embraces and expresses any lawful means to achieve the object, thus fulfilling the Constitutional injunction, that every law shall embrace but one object, and that shall be expressed in its title.'"

In Jonesboro City vs. Cairo & St. Louis Railroad Co., 100 U. S., 192, the Court held that "any provision in the title of a bill which calls attention to its subject, although in general terms, is all that is required by the Constitution." An Illinois case.

It was held by the State Supreme Court, in Johnson vs. The People, 83 Ill., 431, "That it does not require that the subject of the bill must be specifically and exactly expressed in the title; hence we conclude that any expression in the title which calls attention to the subject of the bill, al-

though in general terms, is all that is required." September term, 1876.

The case of Mount Clair vs. Ramsdell, 107 U. S., 147, is in point, where it was held: "That this provision does not require the title of an Act to set forth a detailed statement or an index or abstract of its contents; nor does it prevent uniting in the same Act numerous provisions having one general object fairly indicated by its title. 2. That the powers, however varied and extended, which the township may exercise, constitute but one object which is fairly expressed in a title showing nothing more than the legislative purpose to establish such Township. 3. The conflict between the Constitution and a Statute must be palpable to justify the judiciary in disregarding the latter upon the sole ground that it embraces more than one object, or that if there be but one, it is not sufficiently expressed in the title."

"It is only a very clear case, where the violation of the constitution is plain and palpable, that the statute will be declared unconstitutional by the Courts. If there is simply a doubt of the power of the legislature to make an enactment, that doubt will be solved in favor of the Legislature." The Supervisor, etc., vs. C., B. & Q. R. R. Co., 44 Ill., 229.

"The adjuncts and modus operandi of accomplishing the objects of the Statute need not be stated in the title. City of Ottawa vs. The People, 48 Ill., 233."

The title of the Railroad Charter involved in this case is: "*An Act to incorporate the Jacksonville & Southeastern Railway Company.*" The State Supreme Court say: "It has been

long, repeatedly and uniformly held that Counties, Cities, incorporated Towns and Townships *may be empowered by their charters or charters of railroad companies to subscribe for stock in such companies or even to make donations to aid in constructing railroads, if there is, or can be, anything settled in this Court, it is that such power could be granted and exercised under the Constitution of 1848; of this there can be no question.*" City of Virden vs. Allen, 107 Ill., 506, October term, 1883.

The same Court say further, p. 506: "It has been repeatedly held, and it is equally well settled, that when a charter to authorize the construction and operation of a railroad confers such power upon municipalities, it is germane to such charters, and does not constitute a different subject from that of power to construct the road; that it is but a means to the end, and is but a part of the whole power, and is properly conferred. The voting of stock and issuing bonds to pay for same, are most important and essential means to the end of building railroads."

Both the State and Federal Courts have held beyond a question, we think, that the Act of March 10th, 1869, incorporating the Railroad Company to which the bonds were issued was not repugnant to the Constitution of 1848 by reason of its title.

Nor is the Act of March 10, 1869, a local or private act. Section 21, of the Act, private laws of Illinois, Vol. 3, 1869, is as follows, to-wit: This Act shall be deemed a *public act and shall be liberally construed for all purposes therein expressed and declared*, and shall be in force from and after its passage.

Abbott's Law Dictionary defines a Public Act, Law or Statute, as "An enactment or statute which affects the community generally, although perhaps operating only within a limited territory, as distinguished from a private Act, which bears upon designated individuals."

Acts creating public corporations are public Statutes. Portsmouth Livery Company vs. Watson, 10 Mass., 9.

A lew relating to a particular town and published among the private laws and which in all other respects is a private law, *becomes a public law, if the Legislature have inserted therein a clause providing that it shall be deemed a public act.*

Pollock vs. McClurken, 42 Ill., 37.

An act to survey timber in a particular County is a public Statute. Pierce vs. Greenl, 54.

An act relating to the preservation of a single species of fish in a particular river is a public Act.

Bumhaum vs. Webster, 5 Mass., 266.

V.

The *State Supreme Court* in *People vs. Hamill, 134 Ill., 666, is not conclusive, and is not the law of the land, nor of the State of Illinois.* Both State and Federal Courts were not in accord with it before and are not since it was rendered June 16, 1888, as will clearly appear by the above citations.

The decisions of the State Supreme Court, as shown above have been uniformly against the decision rendered in that case.

In the case of Pana vs. Bowler, 107 U. S., 540-541, the correct doctrine is stated where that Court refused to follow

the State Court decisions—an Illinois case decided October, 1882. The Court say: "This latter proposition is one which falls among the *general principles and doctrines of commercial jurisprudence* upon which it is our duty to form an independent judgment and in respect of which we are under no obligations to follow implicitly the conclusions of any other Court, however learned or able it may be."

And again in Butz vs. City of Muscatine, 8 Wall, 575, the Court say: "Where a question involved in the construction of State Statutes practically affects those remedies of creditors which are protected by the constitution, this Court will exercise its own judgment on the meaning of the Statute, irrespectively of the decisions of State Courts, and if it deems these decisions wrong *will not follow them;* and this whether the case come here from the Circuit Court in ordinary course or from the Supreme Court of the State under the 25th Section of the Judiciary Act."

This question of following State Court decisions is fully discussed in Burgess vs. Seligman, 107 U. S., 33-34, where the Court say, "But when the law *has not been thus settled*, it is the right and duty of the Federal Courts to exercise their own judgment; *as they always do in reference to the doctrines of commercial law and general jurisprudence.*"

We admit the rule that no recital can supply the want of legal authority for the execution of the bonds, but insist that the Act of March 10th, 1869, gave plenary legislative authority for the issue of the bonds and was not repugnant

to the Constitution of 1848, and that the admitted facts averred in the declaration and the recitals on the bonds are sufficient in law for a bona-fide holder of the bonds to recover judgment thereon.

VI.

The Equities of this case are all with the Plaintiff. It would seem an anomaly in jurisprudence for the Courts to hold that *a part* of an issue of bonds issued at the same time and date, executed and delivered by the same officials, under the same Statute, on the same vote, for the same purpose and of the same tenor and effect, *should be held valid and a part void, for want of power to issue them.*

If there was any power for the legal issue of any part of the bonds, *it must exist for the whole issue.* Had all of the bonds been included in the Jackson suit they would all have been unquestionably held *valid* in the decree of June 5, 1881.

We respectfully submit that in our opinion nothing has since occurred to overthrow, diminish or annihilate the authority of the Act of March 10, 1869, under which Jackson's bonds *were held valid obligations of Hamilton County.* That Statute still exists and we invoke its authority in this case.

Moreover, it will not be denied that the County has since recognized the justice of that decree by paying Jackson's bonds in full.

All of which is respectfully submitted with the confident expectation that justice will be done these parties and

the Writ of Certiorari be issued and the questions involved in Petitioner's case be reviewed and equitably determined by this Honorable Court.

Geo. A. Dauden

Attorney for Petitioner.

For Harriet M. Zane,
Petitioner.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

Reply Brief of Sanders

IN THE

SUPREME COURT

Filed Nov. 19, 1901.

OF THE UNITED STATES.

October Term, A. D. 1901.

HARRIETT M. ZANE,
Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Reply Brief in Support of Application for Writ of Certiorari.

No. 344.

REPLY BRIEF TO DEFENDANT'S BRIEF.

GEORGE A. SANDERS,
Attorney for Petitioner.

IN THE

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REPLY BRIEF OF PETITIONER.

Under head II, page 20, and following of defendant's brief to page 24, counsel strenuously insists that the bonds in controversy were *void upon their face* when issued, being, as he claims, prohibited by the Constitution of July 2, 1870.

That therefore there could be no *bona fide* holding of the bonds, and that there was no *then existing law* when the vote was taken, Nov 3, 1868, for subscription to the stock of the

railroad company in payment of which the bonds were issued. But this position is entirely untenable, both as to the law and the facts on the question.

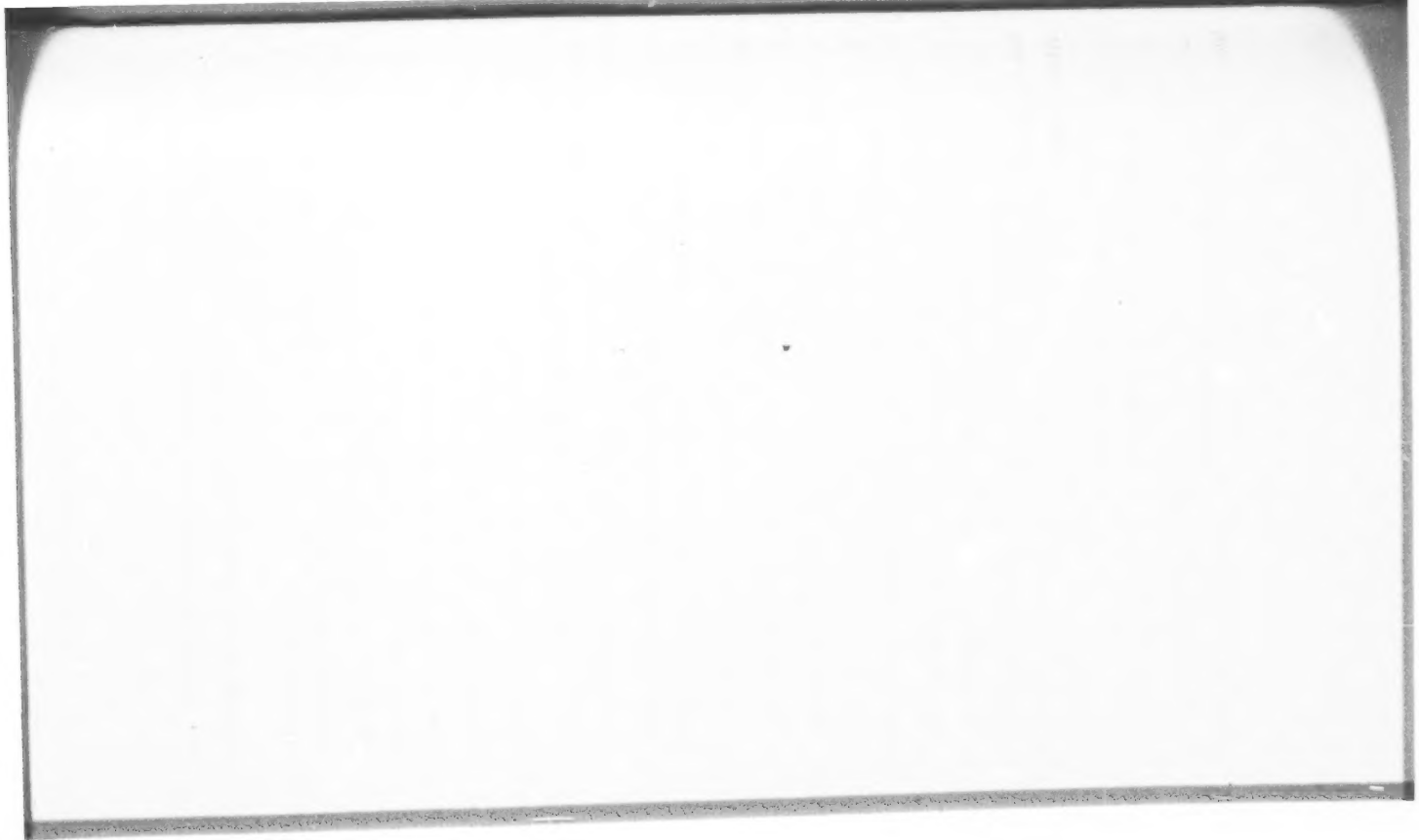
The vote was taken *Nov. 3, 1868.* The act incorporating the St. Louis and South Eastern Railroad Company, to which the bonds were issued, was passed March 10th, 1869. The present State Constitution went into effect July 2, 1870, and the bonds in question were dated Oct. 23 and Nov. 28, 1871.

It is primary law, that all Acts of the legislature and of Congress, are *deemed constitutional and effective, until held void by a court of competent jurisdiction.*

The Acts of the people by their vote of Nov. 3d, 1868, and the county officials in the issuing of the bonds in 1871, under the Act of March 10th, 1869, *must be held lawful and valid until* the act of incorporation of the railroad company of March 10th, 1869, was declared unconstitutional by a court of competent jurisdiction.

For some *ten years* neither the acts of the county defendant in the issue of these bonds, nor the constitutionality of the act of the legislature under which they were issued was ever called in question, and the interest was regularly levied, collected and paid.

In *June, 1881,* a most excellent Judge, S. B. Treat, of the Federal Circuit Court of this district, in a decree of that date, held 105 of the 200 bonds of this issue *valid obligations* of the defendant county, and the act of incorporation of



the railroad company under which they were issued *not repugnant* to either the constitution of 1848, or that of 1870.

This was a severely contested case, as it originated in the State Circuit Court, and was removed to the Federal Court, where one Jackson, *owner of 105 of these bonds, filed his cross bill*, naming his bonds by number, which were held valid in the decree, and the bill of the complainants was dismissed at their cost. This decree was never appealed from, and in due time Jackson's bonds and interest were paid in full.

The contention then as now, was as to the constitutionality of the Act of March 10th, 1869, under which the bonds were issued. There has never been any other question raised as to irregularity or informality in the issue of the bonds.

These bonds were therefore *valid* in accordance with the terms on their face, under the decree of the United States Circuit Court, *until some 18 years after their issue*, when the State Supreme Court in an *ex parte* case of Hamill, June 16, 1888, 134 Ill. 656, held the whole issue of $200,000 void, because, as they claimed, the Act of March, 1869, was repugnant to the constitution by reason of its title. Can it be possible that defendant's counsel is serious in strenuously insisting that *there was no law in existence* when the vote of Nov. 3, 1868, was taken, under a law which was held constitutional in Judge Treat's decree of June 5, 1881, and never after questioned until the Hamill case of 1888, *some 18 years* after the bonds were issued, sold and delivered, and that there

could have been no *bona fide* holding of these bonds in all of those 18 years.

The election of Nov. 30, 1868, was lawfully called and held and $200,000 voted as a subscription to the stock of the Shawneetown branch of the Illinois Central Railroad Co., under the Act incorporating that road.

Private Laws of Ills, 1865, vol. 2, p. 218-220.

This *was "an existing law" for such an election and subscription some five years before the Constitution of 1870 was effective.*

Then the Act of March 10, 1869, *expressly* gives legislative authority for combining, leasing and purchasing branch lines and connecting railroads with the St. Louis & Southeastern Railroad, and EXPRESSLY and IN EXPLICIT TERMS grants authority to the County of Hamilton to issue its $200,000 of bonds to the St. Louis and Southeastern Railroad Company, voted Nov. 3, 1868, to one of its branches or leased lines, the Shawneetown branch of the Illinois Central Railroad. This was a *then "existing law" more than a year before the adoption of the State Constitution of 1870.*

Seldom is legislative authority in such cases *more expressly and more explicitly given, and more faithfully executed than in this case.*

The above statements and dates, about which there can be no contention, show that there were existing laws for the vote at the time it was taken, and for the issue of the bonds

when they were issued, and that the law under which they were issued was not repugnant to the Constitution of 1870

The section of the Constitution of July 2, 1870, which counsel claims is violated by the issue of these bonds is found in Starr & Curtis' Annotated Statutes of Illinois, vol. I, p. 203, and is as follows:

"No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad, or private corporation, or make donation to, or loan its credit in aid of such corporation; *Provided, however,* that the adoption of this Article *shall not be construed as affecting the right of any such municipality to make such subscriptions,* WHERE THE SAME HAVE BEEN AUTHORIZED UNDER EXISTING LAWS, *by a vote of the people in such municipality prior to such adoption.*"

This issue of bonds and subscription unquestionably comes WITHIN *the proviso,* as the vote was had Nov. 3, 1868, under *then existing laws,* and the issue of the bonds is in no way affected by, or in violation of the Constitution of 1870.

We ask the special attention of this Honorable Court to the case of Pana vs. Bowler 107 U. S. 529, as *decisive* that the issue of the bonds in controversy is not in violation of the constitution of 1870, and on the question of the Amendatory Act of March 10, 1901, and the authority to issue bonds to the St. Louis & Southeastern Railroad Co. when the vote was to subscribe to the stock of the Shawneetown branch of the Illinois Central Railroad Co.

Also that the Hamill case 134, Illinois 666, was *not binding upon non-residents.*

Pana vs. Bowler, 107, U. S. 545.

For fuller statement of all facts referring to questions involved see Austin v. Hamilton Co. 22 C. C. A. 128.

For discussion of all other questions referred to in defendant's brief we refer to our original brief.

All of which is respectfully submitted,

George A. Sanders

Plaintiff's Attorney.

No. 344 115

Brief of Harnett

Filed Nov 14, 1901.

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IN SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1901.

HARRIET M. ZEIS,
Plaintiff in Error,
vs.
COUNTY OF HAMILTON, ILLINOIS,
Defendant in Error.

Petition for Certiorari.
No. 344.

BRIEF OF DEFENDANT IN ERROR.

J. H. HARNETT,
Attorney for Defendant in Error.

IN SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1901.

HARRIET M. ZANE.
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vs.
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Defendant in Error.

Petition for Certiorari.

No. 344.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

This is a petition presented to this Court for a writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, asking this Court to review the decision of that Court as to the validity of six municipal bonds each for the sum of one thousand dollars with nine interest coupons attached. On October 23d, and November 28th, 1871, the defendant in error issued and delivered to the St. Louis and Southeastern Railway Company two hundred thousand dollars of its municipal bonds each for the sum of one thousand dollars with interest coupons attached. This suit, as originally brought was an action of assumpsit commenced in the United States Circuit Court for the Southern District of Illinois on six of these bonds with the coupons attached thereto. The declaration filed in the case contained a special count on the bonds and coupons and the common counts, but by a stipulation contained in the bill of exceptions it was agreed that the bonds and coupons constitute the only

alleged cause of action on which the suit was brought. A demurrer was filed to the declaration on the ground that the bonds were issued without authority of law. No act of the legislature, either general or special, public or private, having been passed authorizing the voters of Hamilton County to vote to issue the bonds, or the authorities of the county to execute and deliver them. The legal voters of the county at an election held on the 3d day of November, A. D. 1868, voted to issue two hundred thousand dollars in the bonds of the county to the Shawneetown branch of the Illinois Central Railroad Company. Only two acts of the legislature are mentioned on the face of the bonds; one of these is entitled: "An Act to fund and provide for the payment of railroad debts of counties, townships, cities and towns," public laws of Illinois, 1869, page 319, and is a mere registration act that it is admitted conferred no power on the county to issue the bonds. The other is entitled: "An Act to incorporate the St. Louis and Southeastern Railway Company." Approved and in force March 20th, 1869. Private Laws of Illinois 1869, Vol. 3, page 238.

The twentieth section of the last act which is the only act that it is claimed by counsel for plaintiff in error conferred any authority on defendant in error to issue the bonds provides: "And the County Court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this company the two hundred thousand dollars or any part thereof heretofore voted by a majority of the legal voters of the county to the Shawneetown branch of the Illinois Central Railroad Company." It will be observed that the vote to issue the bonds was taken on November 3d, 1868. At that time there was no law, public or private, general or special, of the State of Illinois authorizing the issue of the bonds.

The act to incorporate the St. Louis and Southeastern Railway Company was not passed until March 10th, 1869, more than

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four months after the vote to issue the bonds was taken and that act which is the only act under which it is claimed any authority was conferred on the county to issue bonds has been declared unconstitutional and void by the Supreme Court of the State of Illinois.

Sometime after these bonds were isued the county commenced proceedings in the Circuit Court of Hamilton County, Illinois, against the St. Louis and South Eastern Railway Company, the County Clerk, County Collector, State Auditor, and State Treasurer and the "unknown owners of Hamilton County bonds" to have the bonds declared void for want of power in the county to issue them. One, Walter M. Jackson, intervened in the suit claiming to own one hundred and five of the two hundred bonds for one thousand dollars each issued by Hamilton County, and on the grounds of diverse citizenship removed the case into the United States Circuit Court for the Southern District of Illinois. After that Mr. Jackson filed a cross bill in the case against the county, and on June 5th, 1881, the county having failed to answer and made default a decree was rendered on the cross bill describing by their numbers each of the one hundred and five bonds owned by Jackson and holding them legal and valid obligations of the county. The other ninety-five, of which the six sued on in this case form a part, were not mentioned or described in the cross bill nor decree, and as to them there was no decree or adjudication whatever.

Suit was brought in the United States Circuit Court for the Southern District of Illinois on some of the bonds formerly owned by Jackson and described in the foregoing decree and on some of the ninety-five bonds not described, and not included in that decree and the Court held the one hundred and five bonds formerly owned by Jackson and described in the decree valid and the ninety-five not owned by him and not described in the decree void. That case was taken to the United States Circuit

Court of Appeals for the Seventh Circuit and the judgement of the Circuit Court was affirmed and the case is reported in Austin vs. Hamilton County, 76 Fed. Rep. 208.

In the Austin case plaintiff alleged the substance of the proceedings in the Jackson chancery case where the bonds owned by Jackson were held valid and relied solely upon the adjudication in favor of Jackson in the chancery suit to sustain the validity of the bonds sued upon. And the Court of Appeals for the Seventh Circuit solely upon the ground of *res adjudicata* held the bonds formerly owned by Jackson and described in the chancery decree valid and the others not included in the Jackson decree void. The constitution of the State of Illinois adopted by the vote of the people on July 2d, 1870, absolutely prohibited all municipal corporations from voting bonds to aid in the construction of railroads after that date unless such bonds had been previously authorized under existing laws by a vote of the people of such municipality prior to the adoption of the constitution. Municipal bonds in the State of Illinois issued since the adoption of the constitution of 1870 as these bonds were, are *prima facie* invalid, and the burden of proof rests upon the plaintiff to show affirmatively that they were authorized under existing laws by a vote of the people prior to that time.

In the declaration in this case there is no allegation whatever about the bonds formerly owned by Jackson being held valid in the former adjudication. As it appeared upon the face of the plaintiff's declaration that these bonds were issued without authority of law and in direct violation of the positive prohibition of the constitution of 1870 having been issued after the constitution went into effect, and that there never was any law passed by the State of Illinois, general or special, public or private, authorizing the issue of these bonds, nor any former adjudication holding these particular bonds valid, the defendant demurred to the plaintiff's declaration and the Court sustained the demurrer

and the plaitiff electing to stand by her declaration judgement was rendered against plaintiff for costs. From that judgement the plaintiff in error prosecuted a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit and the judgement of the Circuit Court was affirmed by the Court of Appeals, and the opinion of the Court in affirming the judgement is reported in Zane vs. Hamilton County, Illinois, 104 Fed. Rep. 63. A petition for a rehearing was filed in the Court of Appeals by the plaintiff in error, and her petition for rehearing was denied.

Plaintiff in error having failed in the Court of Appeals to reverse the judgment of the Circuit Court, and having failed on her petition for a rehearing to obtain a rehearing of the cause, now presents her petition for writ of certiorari to this Court under the second clause of the sixth section of the act of Congress, approved March 3d, 1891, creating the United States Circuit Court of Appeals. That clause provides: "And excepting also that in any such case as is hereinbefore made final in the Circuit Court of Appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." The only error assigned is in sustaining defendant's demurrer to plaintiff's declaration.

I.

BRIEF OF THE ARGUMENT.

Bonds Void on Their Face.

There was no authority of law for issuing these bonds and an examination of the acts referred to on the face of each bond supposed to confer authority will demonstrate that the bonds were issued without authority of law and are void. Each bond recites that it is one of two hundred bonds of like tenor and amount, and is issued under and by virtue of the authority given by a majority of all the legal voters of the county by their vote at an election held in pursuance to law on November 3d, 1868, and by authority given by an act of the general assembly of the State of Illinois, in force March 10, 1869, entitled: "An Act to incorporate the St. Louis and Southeastern Railway Company." The act of April 16, 1869, which is merely an act authorizing the registration of the bonds, is also referred to, but that act conferred no power on the people of the county to vote to subscribe to the capital stock of any railroad. The benefits of that act cannot apply to any debt unless the subscription creating such debt was first submitted to an election of the legal voters of the county under the provisions of an existing law authorizing such vote to be taken, and a majority of the legal voters living in the county were in favor of such subscription. These are all the acts referred to on the face of the bonds purporting to grant power to issue them. The election of Nov. 3, 1868, was to subscribe two hundred thousand dollars to the Shawneetown branch of the Illinois Central Railroad Company. An examination of the act to incorporate the Shawneetown branch of the Illinois Central Railroad Company, private laws of Illinois, 1865, Vol. 2, pp. 218-220, will show that their was no authority conferred on the people of the county to vote on that subject, and no author-

ity to issue the bonds. In fact, there was no law, public or private, general or special, authorizing the vote of Nov. 3, 1868, or the county to act in regard to these bonds. The entire proceedings relating to the vote, and to the issue of the bonds was without authority of law and void. The purchasers of the bonds were bound to know that the vote of Nov. 3, 1868, was upon the proposition to subscribe two hundred thousand dollars in stock to aid in constructing the Shawneetown branch of the Illinois Central Railroad, and that the act incorporating that company contained no power or authority of any kind authorizing the county to vote upon that subject or to subscribe stock, issue bonds or make donations of any kind. They were bound to know that the act of March 10, 1869, incorporating the St. Louis and Southeastern Railway Company, private laws of Illinois 1869, Vol. 3, p. 238, by authority of which it is specified on the face of each of the bonds it was issued, conferred no power or authority on the county to issue bonds or to levy and collect taxes to pay the interest or principal thereof. No part of that act had any reference to the bonds in question, except the 20th section, and that only purported to authorize the County Court to subscribe the bonds alreardy voted to another railroad company to the St. Louis and Southeastern Railway Company without submitting the question of such subscription to the vote of the people of the county. It is self-evident that the act of March 10, 1869, incorporating the St. Louis and Southeastern Railway Company, under the 20th section of which it is claimed authority exists, was passed after the vote of March 3, 1868, had been taken. Hence, nothing contained in the act of March 10, 1869, could supply or make good the want of power in the act of 1865 to incorporate the Shawneetown branch of the Illinois Central Railroad Company under which the vote of March 3, 1868, was taken.

Section 20 of the act to incorporate the St. Louis and Southeastern Railway Company conferred no power to issue the bonds

for that section has been held to be in violation of article 3 of section 23 of the constitution of Illinois adopted in 1848, (Starr & Curtis' Illinois Annotated Statutes, Vol. 1, p. 72), which provides that "no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title."

The Supreme Court of Illinois in the People ex rel Standefer, collector, vs. Hamill, 134 Ill. 670, 671, opinion filed June 16, 1888, in holding section 20 of the foregoing act to be in violation of article 3 of section 23 of the constitution of 1848 said:

"First—As respects the $200,000 bonds issued to the St. Louis and Southeastern Railroad Company, it is not claimed they were ever authorized, by any vote of the people of the county, to be issued to that particular corporation, either in payment for stock or otherwise. It is claimed, however, that at an election held on the 3d day of November, 1868, the voters of the county elected to subscribe $200,000 to the capital stock of the Shawneetown branch of the Illinois Central Railroad, and authorized the issuing of bonds to that amount in payment for a like amount of stock in that company, and that by the 20th section of the act to incorporate the St. Louis and Southeastern Railroad Company, approved March, 1869, the county was authorized and empowered to subscribe to the capital stock of such railway company the $200,000, or any part thereof, voted by a majority of the legal voters of the county, to the 'Shawneetown branch of the Illinois Central Railroad.' There is no pretense there is any enabling act other than the act of March 10, 1869, under which the county of Hamilton could have subscribed for $200,000 stock in the St. Louis and Southeastern Railroad Company, and issued the bonds in question for the payment; and as the point made, that that section of the charcter of the corporation authorizing such subscription is unconstitutional, must be sustained, it is fatal to the validity of this whole series of bonds.

"It is seen the act of March 10, 1869, to which reference is made as giving the requisite authority to the county to subscribe for the stock and issue the bonds, is 'An act to incorporate the St. Louis and Southeastern Railroad Company.' That is all it purports to be by its title. The constitution of 1848, under which this act was passed, contained a restriction that 'no private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title.' This is a private or local act, and although the subscribing by counties, etc., to the capital stock of the corporation thereby created, is germane to the object expressed in the title (Belleville, etc., Railroad Co. vs. Gregory, 15 Ill. 20, City of Virden vs. Allen, 107 Id. 505,) the diversion to that corporation of a subscription theretofore authorized by a vote of the people to be made to a different corporation is a wholly different thing. That, it is to be presumed, affects, adversely, the corporation from which the subscription voted is to be diverted, and is, therefore, clearly not germane to the title of the act, and section 20 must therefore be held to have been inhibited by the constitution of 1848, and is for that reason void and of no effect. (Lockport vs. Gaylord, 61 Ill. 276; Middleport vs. Aetna Life Ins. Co., 82 Id. 562.)

"It is well settled by the previous decisions of this court, that municipal bonds issued for stock in railroad corporations, without authority of law, are void, no matter into whose hands they may come."

The act of April 16, 1869, Public Laws of Illinois, 1869, p. 319, the only remaining act recited on the face of the bonds purporting to show authority for issuing them, grants no power or authority to issue bonds, but only provides when such bonds have been issued under authority of law how they shall be paid, and if the question of creating such a debt was first submitted to an election of the legal voters of the county under the pro-

visions of the laws of the State and a majority of the votes cast were in favor of such subscription, then, under section 7 of the act, the bonds might be registered in the office of the Auditor of State. It is not pretended or claimed, that there was any power or authority to issue these bonds under the act of Nov. 6, 1849, authorizing counties to subscribe to the capital stock of railroad companies not exceeding $100,000 under certain restructions therein named. It is self-evident the vote of Nov. 3, 1868, was not taken under that statute, for by it $100,000 is the maximum amount that can be voted by any county. Under the power to subscribe $100,000 the voting and issuing of $200,000 in the bonds of the county would be absolutely null and void for want of power and authority in the county to act at all. It is certain that there was no law, public or private, general or special, in the State of Illinois authorizing these bonds to be either voted or issued by the county. It is well settled that the purchasers of such bonds are bound to take notice of the recitals in the bonds, the records in the county court in relation to the voting and issuing of the bonds, the acts of the general assembly specified on the bonds and the laws or constitution of the State in force at the time of voting upon and time of issuing the bonds. It is contended that the recitals in the bonds estopped the defendant from denying their validity and it is claimed that on their face they import a compliance with the law under which they were issued. But counsel have failed to show that there was any law authorizing the issue of the bonds. This court has never intended to decide, and has never decided even where the rights of *bona fide* holders have been involvd, that where the bonds have been issued without legislative authority that they are valid and binding against the municipal corporation issuing them.

Mr. Justice Harlan in delivering the opinion of the Court in Northern Bank of Toledo vs. Porter Township, 110 U. S. 615, on this question says: "These recitals, counsel argue, import

a compliance, in all respects, with the law, and therefore, the township will not be allowed, against a *bona fide* holder for value, to say that the circumstances did not exist which authorized it to issue the bonds. It is not to be denied that there are general expressions in some former opinions which, apart from their special facts, seem to afford support to this proposition in the general terms in which it is presented. But this Court said in Cohens vs. Virginia, 6 Wheat. 264; and again in Carroll vs. Lessee of Carroll, 16 How. 275, 287, that it was a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which they are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

"An examination of the cases in which those general expressions are found will show that the Court never intended to adjudge that mere recitals by the officers of a municipal corporation in bonds issued in aid of a railroad corporation precluded an inquiry, even where the rights of a *bona fide* holder were involved as to the existence of legislative authority to issue them." The distinction so clearly pointed out in this case as to what facts the municipal corporation will be estopped from denying ,and what it is not estopped from denying, runs through all the decisions, as an examination will show. If the bond on its face recites that an election was held and that all other steps required by law were taken before the bonds were issued, these are facts, and the corporation will be estopped from denying them. It has never been held that the corporation was estopped from denying that there was no legislative authority for issuing the bonds. It is only as to matters of fact that the corporation can be estopped, and not as to matters of law. Whether there was legislative authority for issuing them is always a question of law. In Post vs. Supervisors, 105 U. S. 668, 669, Mr. Justice

Gray in delivering the opinion of the Court, laid down these propositions:

"Second—Whether a seeming act of the legislature is or is not a law is a judicial question to be determined by the Court and not a question of fact to be tried by a jury."

"Fourth—An act of the legislature of a State, which has been held by its highest court not ot be a statute of the State because never passed as its constitution required, cannot be held by the Courts of the United States, upon the same evidence to be a law of the State."

"Fifth—That which is not a law can give no validity to bonds purporting to be issued under it, even in the hands of those who take them for value and in the belief that they have been lawfully issued."

In Katzenburger vs. Aberdeen, 121 U. S. 176, 177, Mr. Chief Justice Waite, in delivering the opinion of the Court, said: "Legislative authority, express or implied, to pass the ordinance must be shown. The recital, therefore, in its present form, is of matter of law only, because it implies the existence of no special facts affecting the case, except the issue of the bonds under the ordinance to pay the subscription to the stock without any vote of the electors to be taxed therefor. It is in effect nothing more than a recital that bonds issued under such circumstances were under and pursuant to law, and the charter of the city. Such a recital does not estop the city from asserting the contrary. To hold otherwise would be to invest a municipal corporation with full legislative power and make it superior to the laws by which it was created. Dixon County vs. Field, 111 U. S. 92."

In McClure vs. Township of Oxford, 94 U. S. 432, Mr. Chief Justice Waite, in delivering the opinion of the Court, said: "A municipal corporation must have legislative authority to sub-

scribe to the capital stock of a bridge company before its officers can bind the body politic to the payment of bonds purporting to be issued on that account. Municipal officers cannot rightfully dispense with any of the essential forms or proceeding which the legislature has prescribed for the purpose of investing them with power to act in the matter, of such a subscription. If they do, the bonds will be invalid in the hands of all that cannot claim protection as *bona fide* holders. To be a *bona fide* holder one must be himself a purchaser for value without notice, or the successor of one who was. Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds, which upon their face refer to the statute under which they were issued is bound to take notice of the statute and of all its requirements."

In Crow vs. Oxford, 119 U. S. 221, Mr. Justice Blatchford, in delivering the opinion of the Court, said: "The plaintiff, being referred by the bonds to the act of March 1st, 1872, as the statute under which they were issued, was bound, as was said in the McClure case, to take notice of the statute and all of its requirements. If, finding the bonds invalid under that statute, as he is held by law to have done, he claims the right to refer to the act of March 2d, 1872, as the source of authority, because that act was in force from March 7, 1872, he was bound to take notice of the requirements of that act." In the same case on page 226 in regard to the recitals in the bond it was said: "As the recitals in the bond here are of no avail to the plaintiff, as before shown, so the certificate of the auditor does not aid him. The bonds on their face excluded the possibility of their having been issued under the act of March 2d, 1872, and as the public records showed that the proceedings were not taken under that act, and as the auditor was authorized by section 14 of that act only to register bonds issued under that act, and as these bonds

did not fall within the purview of bonds authorized to be registered by him under section 15, of that act, it follows that the auditor had no right to decide, as matter of law, that the bonds were bonds of a kind which he was authorized by the act of March 2d, 1872, to register and certify, when, as a matter of law, they were not."

In Kelly vs. Millan, 127 U. S. 150, Mr. Justice Blatchford, in delivering the opinion of the Court, said: "It is well settled that a municipal corporation, in order to exercise the power of becoming a stockholder in a railroad corporation must have such power conferred upon it by a grant from the legislature; and that even the power to subscribe for such stock does not carry with it the power to issue negotiable bonds in payment of the subscription, unless the power to issue such bonds is expressly or by reasonable implication conferred by statute."

If it appears upon the face of the bonds sued on as in this case, that they were issued under a certain act mentioned in the bonds and that act is void, the bonds themselves will be void.

Gilson vs. Dayton, 123 U. S. 59.

Lippincot vs. Town of Pana, 92 Ill. 34.

Gaddis vs. Richland County 92 Ill. 126.

Barns vs. Town of Lacon, 84 Ill. 464.

Middleport vs. Aetna Life Ins. Co. et al., 82 Ill. 564.

Marshall vs. Sillimon et al., 61 Ill. 223.

An examination of every case cited by counsel for plaintiff in error will show that in each of these cases there was legislative authority given to issue the bonds. These decisions, therefore, have no application to the facts in this case. The courts have never held that where there was no legislative power given to issue the bonds that the corporation was estopped from denying want of authority. If a municipal corporation was estopped from

denying that it had no legislative authority for issuing the bonds, then bonds issued without authority of law in the hands of a *bona fide* purchaser would be as valid and binding as those issued under authority of law. No Court for the purpose of protecting a *bona fide* holder has ever gone to the extent of holding that bonds issued without legislative authority are as valid and binding as those issued by authority of law. Recitals in bonds which estop the corporation issuing them do not extend to or cover matters of law. All parties are equally bound to know the law, and a certificate reciting the actual facts, and that thereby the bonds were conformable to the law, when in fact they are not, will not make them so, nor can it work an estoppel upon the county to claim the protection of the law. Dixon vs. Field, 111 U. S. 92. Recitals in bonds issued under legislative authority may estop the municipality from disputing their authority as against a *bona fide* holder for value, but when the municipal bonds are issued in violation of law, or a constitutional provision no such estoppel can arise by reason of any recitals contained in the bonds.

Lake County vs. Rawlins, 130 U. S. 662.

Lake County vs. Graham, 130 U. S. 674.

Sutliff vs. Lake County Commissioners, 147 U. S. 230.

It cannot be contended that the Supreme Court of Illinois had never construed article 3, of section 23, of the constitution of 1848, until it construed it in the people on the relation of Standefer vs. Hamill, 134 Ill. 666, or that it gave that section a different construction in that case to what it had formerly given it in former cases. As early as 1863, the Supreme Court of Illinois in the case of the People ex rel vs. Mellen, 32 Ill. 181, gave a construction to this same section of the constitution of 1848 and held an act of the general assembly void for the same reason. The Supreme Court of Illinois having decided

that the 20th section of the act to incorporate the St. Louis and Southeastern Railway Company, was a violation of article 3, of section 23, of the constitution of 1848, under the rule laid down and uniformly adhered to by this Court, the United States Courts will follow that decision and hold section 20 unconstitutional and void. That section being void there was no authority of law to issue these bonds.

In Post vs. Supervisors, 105 U. S. 669, Mr. Justice Gray, in delivering the opinion of the Court, laid down this proposition:

"Fourth—The construction uniformly given to the constitution of a State by its highest court is binding on the Courts of the United States as a rule of decision."

In that case it was held that the act of the general assembly of Illinois, under which the bonds in suit were issued, having been adjudged by the Supreme Court of the State to have never become a law, the decision of the State Court on that subject must govern the action of the Courts of the United States and the bonds were held void.

This court has held that it will abandon its former decision construing a state statute if the State Courts have subsequently given to it a different construction.

Fairfield vs. County of Gallatin, 100 U. S. 54-55.

Green vs. Neal's Lessee, 6 Pet. 291.

Sudam vs. Williamson, 24 How. 427.

The decisions of the highesft judicial tribunal of a State are entitled to great and ordinarily decisive weight.

Rich vs. Mentz Township, 134 U. S. 632.

Meriwether vs. Muhlenberg County Court, 120 U. S. 354-357.

Claybourne County vs. Brooks, 111 U. S. 400, 410.

When the construction of the constitution or the statute of a State has been fixed by an unbroken series of decisions of its highest Court, the Courts of the United States accept and apply it in cases before them.

Township of Elmwood vs. Mercy, 92 U. S. 289.

Township of Oakland vs. Skinner, 94 U. S. 255.

Barnum vs. Okolona, 148 U. S. 393.

In Burgess vs. Seligman, 107 U. S. 33, Mr. Justice Bradley, in delivering the opinion of the Court and reviewing the authorities upon this subject, said: "Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is."

In Austin vs. Hamilton County, 76 Fed. Rep. 208, the United States Circuit Court of Appeals for the Seventh Circuit held void some of the same issue of bonds involved in this suit which were not included in the Jackson chancery decree; and those included in the decree valid. In that case the plaintiff in his declaration did not rely upon their being any authority of law authorizing the bonds to be issued, but relied solely upon the former adjudication in the chancery suit. The declaration in this case is not based on any former adjudication nor is there any averment in it that the plaintiff was a purchaser of the bonds in good faith but plaintiff relies solely upon the act of March 10th, 1869, for authority to issue the bonds when it is admitted that this act has been declared unconstitutional and

void by the Supreme Court of Illinois. On page 210 of the Austin case the court say: "The declaration, it is to be observed, contains no averment to the effect that plaintiff was a purchaser of the bonds in good faith. On the contrary, his reliance is shown to have been solely upon the adjudication in favor of Jackson in the chancery suit. Indeed, the declaration may be taken as a concession to the contention of counsel for defendant in error that outside of section 20 of the act for the incorporation of the St. Louis and Southeastern Railway Company there was no authority for the execution of these bonds." In reference to the bonds not included in the chancery suit on page 212 of the Austin case the Court say: "The other six bonds do not come within the estoppel because it does not appear that they were held by any one who was a party to the decree; and the plaintiff in error is not in a situation to ask as he does that in order to uphold them we disregard the decision of the Supreme Court of the State and follow the earlier ruling of the United States Circuit Court in the chancery suit. It does not appear that he obtained the six bonds either directly or remotely from an innocent holder for value, and, as already stated, it must be assumed that he did not buy them until after the State Court had declared them invalid."

In the case of Bolles et al. vs. Hamilton County, Illinois, 74 Fed. Rep. 207, the same issue of bonds were involved as are involved in this suit. A portion of the bonds and coupons sued on in that case were included in the chancery decree and the others were not, and the Court held the former valid and the latter void. In every suit involving the validity of the $200,000 in bonds issued by Hamilton County to the St. Louis and Southeastern Railway Company that has been tried in the United States Courts it has never been held that any of the bonds not included in the chancery suit in the Jackson case were legal and valid obligations against the county. On the contrary, it has

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been held in every case in which these bonds were involved, both by the United States Circuit Court for the Southern District of Illinois and the United States Circuit Court of Appeals for the Seventh Circuit that these bonds were void, and that there was no power to issue them, and the only reason the bonds included in the chancery suit was held valid was on account of the question of their validity being *res adjudicata* by the decree in the chancery case.

In affirming the judgment of the United States Circuit Court for the Southern District of Illinois sustaining the demurrer to the declaration in this case the United States Circuit Court of Appeals for the Seventh Circuit in Zane vs. Hamilton County, Illinois, 104 Fed. Rep. 63, 64, say: "The question is whether there was authority of law for the issue of the bonds. The bonds bear date October 23d, 1871, and were not executed before that date. They are a part of the issue of $200,000 referred to in the case of Austin vs. Hamilton County, 76 Fed. Rep. 208, but are not a part of the 105 bonds which, as shown in that case, had been owned by Walter M. Jackson, and in a suit to which the county and he were parties, had been adjudged to be valid.

The only authority asserted for the issue of the bonds is section 20 of the act of March 10, 1869, whereby the St. Louis and Southeastern Railway Company was incorporated. In People vs. Hamill, 134 Ill. 666, where the validity of these bonds was in issue it was held that they were invalid because section 20 of the act mentioned was void as being in violation of the provision of the constitution of the State (article 3, section 23), that 'no private or local law * * * shall embrace more than one subject and that shall be expressed in the title.' This Court recognized the authority of that decision in the Austin case and must recognize it now. It follows that the bonds were issued without authority of law and in the hands of any and all holders unless, like Jackson they can claim under an unreversed ad-

judication must be regarded invalid. No recital can supply the want of legal authority for their execution. The judgment below is affirmed."

II.

Bonds Issued in Violation of Constitution Void.

Municipal bonds in Illinois, issued since the adoption of the constitution of 1870 as these bonds were, are *prima facie* invalid, and the burden of proof rests upon the plaintiff to show affirmatively that they were authorized under existing laws by a vote of the people prior to that time.

McClure vs. Township of Oxford, 94 U. S. 429.

Buchannan vs. Litchfield, 102 U. S. 278.

German Savings Bank vs. Franklin County, 128 U. S. 526.

Jackson County vs. Brush, 77 Ill. 59.

These bonds were issued in violation of separate section 2 of the constitution of 1870 which went into force July 2d, 1870. That section provides that: "No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: *Provided, however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption." Separate section 2 of the constitution of 1870. Starr & Curtis' Annotated Statutes, Vol. 1, p. 203. As these bonds were not authorized to be issued under any exist-

ing law by a vote of the people of the county prior to the adoption of the constitution, they do not fall within the proviso of the foregoing section. It is well settled that all negative or prohibitory provisions even in a constitution execute themselves, making void all acts done in violation of such provisions, the same as if in violation of express statutory law.

Law et al. vs. People ex rel, 87 Ill. 385.
Fuller vs. City of Chicago et al., 89 Ill. 282.

The bonds on their face bear date October 23, 1871, and therefore every purchaser of them was bound to know that they were issued after the positve prohibition of the constitution had been adopted, preventing every municipality in the State from voting to become a subscriber to the capital stock of any railroad or private corporation. Under these circumstances there can be no such thing as a *bona fide* purchaser of these bonds for it appears upon the face of each bond that it was issued in violation of the prohibition of the constitution and is therefore void.

In Concord vs. Robinson, 121 U. S. 169, the Supreme Court of the United States, by Mr. Justice Harlan, said: "Since that day (July 2, 1870) no municipal corporation of Illinois has possessed authority to subscribe to the capital stock of a railroad or private corporation, or to make donations to, or loan its credit to them, except that a subscription or donation lawfully voted by the people before the adoption of that section could be completed, upon the terms and conditions provided by the electors. There is no saving of the right of such corporations to loan their credit to railroad corporations where such loan of credit was not embraced in a vote previously taken under *existing laws*, and which was favorable to the subscription of stock or a donation."

The Courts concur with great unanimity in holding that there

is no authority in municipal corporations to incur debts or borrow money in order to become subscribers to the capital stock of a railway corporation and that such power must be conferred by *express grant.*

Dillon on Municipal Corporations, Fourth Edition, Vol. 1, Section 161.

Kelly vs. Milan, 127 U. S. 139.

Norton vs. Dyersburg, 127 U. S. 160.

Wells vs. Supervisors, 102 U. S. 625.

Concord vs. Robinson, 121 U. S. 165.

Lewis vs. City of Shreveport, 108 U. S. 282, 283.

If the power to issue bonds in aid of a railway company does not exist, they are void into whosoever's hands they may come.

Dillon on Municipal Corporations, Fourth Edition, Vol. 1, Section 163.

March vs. Fulton County, 10 Wall. 676.

Allen vs. Louisiana, 103 U. S. 80.

A municipality must have affirmative legislative authority to enable it to subscribe to the capital stock of a railroad corporation before its officers can bind the body politic to the payment of bonds purporting to be issued on that account, and if it has not such authority the bonds will be void into whosesoever's possession they may come.

McClure vs. Township of Oxford, 94 U. S. 432.

Township of East Oakland vs. Skinner, 94 U. S. 255.

Town of Concord vs. Portsmouth Savings Bank, 92 U. S. 625.

It is claimed that by subsequent ratification the county may

make legal and valid bonds that, when they were issued, were illegal and void. The legislature never made any attempt to ratify, confirm or legalize these bonds. Even the legislature had no power to ratify and confirm bonds that were issued without authority of law and in violation of the constitution. A municipal corporation may ratify the unauthorized acts and contracts of its agents, and officers which lie *wtthin the seope of the corporate powers, bui not otherwise. But a subsequent ratification cannot make valid an unlawfal act without the scope of corporate authority.* If the unlawful and unauthorized acts of the officers of a municipal corporation can confer power where it is absolutely prohibited by the constitution, then the constitutional prohibition would be entirely powerless to prevent the very evil it was intended to remedy, and the doing of the very acts it absolutely prohibited and declared should not be done would make them legal and valid, according to the logic of counsel for plaintiff in error. An absolute excess of authority by the officers of the municipal corporation, in violation of the law cannot be upheld.

Dillon on Municipal Corporations, Fourth Edition, Vol. 1, Section 463.

Corporate ratification without authority from the legislature cannot make a municipal bond valid which was void when issued, for want of legislative power to make it.

Lewis vs. City of Shreveport, 108 U. S. 282.

Marsh vs. Fulton County, 10 Wall. 676.

The legislature itself cannot confer any power on the county to ratify bonds issued without authority of law and in plain violation of the constitutional prohibition.

As no legislative authority or grant of power by the legislature to the county to enable it to subscirbe to the capital stock of the railroad company, and issue bonds in payment of such subscrip-

tion is shown in the declaration, or on the face of the bonds there was no power in the county to issue them, and the bonds having been having been issued after the constitution went into effect, and in plain violation of the constitutional prohibition, the bonds are absolutely void into whosesoever's hands they may come. and as bonds that are void can create no liability against the county, the demurrer to the declaration was properly sustained.

III.

Petition for Certiorari should be Denied.

While under the statute creating the Circuit Court of Appeals it is competent for this Court to require any judgment or decree of the Circuit Court of Appeals which it sees fit to be certified to this Court for review and determination, yet if it grants the writ in this case then every case in which the judgment or decree of the Circuit Court of Appeals is by the statute made final can be reviewed by this Court, and the decision of the Circuit of Appeals would not be final in any case. Such a construction of the statute would nullify and abrogate all that part of the 6th section of the act creating the United States Circuit Court of Appeals, which provides that the "judgments or decrees of the Circuit Court of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States, etc." The statute itself does not require this Court in every case where a petition for certiorari is presented or where a party to a judgment or decree in the Circuit Court of Appeals has been defeated in a case where its judgment or decree is final, and such party wants the judgment of that Court reviewed by this Court, to require such case to be certified to this Court for its review and determination.

If in a case where the statute has made the judgment or decree of the Circuit Court of Appeals final, the defeated party can, by filing a petition for certiorari in this Court, obtain a review by this Court of the judgment or decree of the Circuit Court of Appeals, then every defeated party to a judgment or decree of the Circuit Court of Appeals can repeal the statute by filing his petition for certiorari in this Court. The filing of the petition for certiorari in this Court does not of itself operate to bring before the Court the judgment or decree of the Circuit Court of Appeals sought to be reviewed. The statute lodges in this Court the exclusive power and right to determine without restriction in what cases it will order by certiorari, or otherwise, judgments or decrees of the Circuit Court of Appeals to be certified to this Court for its review and determination. And it is only such cases as this Court upon its own deliberate judgment and determination shall decide there are good and sufficient reasons presented by the petition for certiorari in which it will require the judgments or decrees of the Circuit Court of Appeals that are by the statute made final to be certified to this Court for its review and determination.

Whether the amount involved in the litigation or the principles of law applicable to the facts of the case are considered, there are no reasons shown in the petition for certiorari or in the brief in support of it why the prayer of the petition should be granted. The amount involved is not large and there are no other cases or collateral interests dependent on the decision of this case. The principles of law applicable to the facts could not be plainer more elementary or better settled. On the same facts in reference to the same issue of bonds the United States Circuit Court for the Southern District of Illinois has on the trial of three or more different cases held this same issue of bonds by defendant in error void and in each case its judgment was affirmed by the United States Circuit Court of Appeals for the

Seventh Circuit. When it has been shown that there was no law in existence at the time voters of the county voted to issue the bonds authorizing the voting and issuing of the bonds, and that they were issued without authority of law, and in plain violation of a positive prohibition of the constitution of the State, and when all these matters appear in the petition for certiorari presented to this Court in candor and fairness, what is there presented in such a case to be reviewed by this Court? Does counsel for plaintiff in error contend that where bonds were issued without authority of law and in plain violation of a positve prohibtion of the constitution of the State under an act declared to be in violation of the constitution of the State by the highest court in the State,—that this Court will declare them legal and valid obligations of the county? To contend for such a bald proposition in view of the long and unbroken line of the decisions of this Court on this question and the elementary principles of law upon which these decisions are based is to throw aside all legal principles and precedents and ask this Court to review and reverse the judgment of the Circuit Court of Appeals in this case, merely because the plaintiff in error is not satisfied with it. There being no reasons presented in the petition for certiorari or in the brief in support of it, why the writ should be granted and the judgment of the Circuit Court of Appeals being final as the jurisdiction of that Court, as is shown on the face of the petition was dependent solely upon the diverse citizenship of the parties the writ should be denied.

Respectfully submitted,

J. M. HAMILL,
Attorney for Defendant in Error.

Supreme Court of the United States.

No. 115.—October Term, 1902.

Harriet M. Zane, Petitioner, vs. The County of Hamilton, Illinois. } On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[April 6, 1903.]

Mr. Justice McKenna delivered the opinion of the Court.

This is an action brought in the United States Circuit Court for the Southern District of Illinois on five coupon bonds which were issued to the St. Louis and Southeastern Railway Company, under a statute of the State of Illinois. The petitioner alleges she is a *bona fide* purchaser of the bonds. A copy of the bonds is inserted in the margin.* The following is a copy of the coupons attached to the bonds:

"$35.00. $35.00.

McLeansboro, Hamilton County, Illinois.

January 1st, 1872.

"The County of Hamilton, in the State of Illinois, promises to pay the sum of thirty-five dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on bond No. 46 for one thousand dollars, issued on subscription to the St. Louis and Southeastern Railway Company.

"This coupon is payable in the city of New York.

J. W. Marshall, *Clerk.*"

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*United States of America.

No. 36. Bond of $1,000.00.

Hamilton County.

Interest seven per cent. Payable semi-annually.

State of Illinois.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis and Southeastern Railway Company, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which sum said county for value received promises to pay the said company, or bearer, in the city and State of New York,

The bonds were a part of an issue of two hundred of like tenor and amount, save as to dates of issue, registration and numbers. There was a general demurrer filed to the declaration, which was sustained, and the case was taken to the Circuit Court of Appeals for the Seventh Circuit. That court affirmed the judgment of the Circuit Court. (104 Fed. Rep. 63.)

The question presented is the validity of the statute of the State under which the bonds were issued. The Circuit Court of Appeals followed the case of *The People ex rel.* v. *Hamil,* (134 Ill. 666,) and (quoting from the case) held that the statute was invalid "'because section 20 of the act mentioned was void, as being in violation of the provision of the constitution of the State that no private or local law . . . shall embrace more than one subject, and that shall be expressed in the title.'"

It was alleged in the declaration and the bonds recited that they were issued under the provisions of an act of the general assembly of the State of Illinois, in force March 10, 1869, entitled "An act to incorporate the

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twenty years after date, payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton, with interest thereon from the date hereof at the rate of seven per cent per annum, payable semi-annually on the first days of January and July in each year, on the presentation and surrender, at the place in said city of New York, where the treasurer of the State of Illinois pays the interest and debt of said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the general assembly of the State of Illinois, in force March 10, A. D. 1869, entitled "An act to incorporate the St. Louis and Southeastern Railway Company."

This bond is also issued under the provisions of an act of the general assembly of the State of Illinois, in force April 16, A. D. 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

This bond is issued in part payment of a subscription made by said county under and by virtue of the authority aforesaid, to the capital stock of the St. Louis and Southeastern Railway Company, in the sum of two hundred thousand dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the county judge of said county under the order of the county court of said county, signing his name hereto, in open court, and by the clerk of said court, in obedience to the order thereof, attesting the same and affixing hereto the seal of the said court, in open court.

Done at the court house at McLeansboro, in said county, on this the 23d day of October, Anno Domini 1871.

[SEAL.] T. B. STEELE,
County Judge of Hamilton County, Ill.

St. Louis and Southeastern Railway Company," and also under the provision of an act in force April 16, 1869, entitled "An act to fund and provide for the payment of railroad debts of counties, townships, cities and towns."

The act of April 16, 1869, was a mere registration act, and, it is conceded, conferred no authority to issue the bonds. Ample authority, however, it is insisted, was given by the act of March 10, 1869. Sections 15, 16 and 17 provided for the subscription by counties and cities and incorporated towns to the stock of the company, and the terms of issue and payment of the bonds and the section 20 provides as follows:

"And the said company may lease or purchase upon such terms as may be agreed upon, any other railroad or part of railroad, either wholly or partially constructed, which may constitute or be adopted as part of their line; and by such lease or purchase they shall acquire and become vested with all the rights and franchises pertaining to said road or part of road in the right of way, construction, maintenance and working thereof. And the county court of Gallatin County is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars or any part thereof heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of Hamilton County is hereby authorized and empowered to subscribe to the capital stock of this company the two hundred thousand dollars or any part thereof heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of Jefferson County is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars or any part thereof voted by a majority of the legal voters of said county to the Mount Vernon Railroad Company.

"And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties: *Provided*, That nothing herein shall be so construed as to prevent either of the counties mentioned in this section subscribing any other or larger amounts to the capital stock of this company than the amount mentioned in this section.

"This act shall be deemed a public act and shall be liberally construed for all purposes therein expressed and declared, and shall be in force from and after its passage."

As we have seen, this act was declared by the Supreme Court of the State in *The People ex rel.* v. *Hamil*, (134 Ill. 666,) to be in violation of the constitution of the State, and that the bonds issued under it were void. This decision, plaintiff in error contends, is contrary to prior decisions interpreting the constitution of the State, and under the faith of which she purchased the bonds, and she insists that a contract hence arose which is protected by the Constitution of the United States. To support the contention a number of decisions are cited, but we do not consider it necessary

to review them. The conclusion of plaintiff in error is but a deduction from them, and we need only consider the more direct cases.

In 83 Ill. 436 it was decided that the provisions of the constitution, that "no private or local law . . . shall embrace more than one subject, and that shall be expressed in its title," did not require that the subject of the bill should be specifically and exactly expressed in the title, and it was concluded that when the title calls attention to the subject of the bill, although in general terms, it fulfilled the requirement of the constitution. In *City of Ottawa* v. *The People ex rel.*, (48 Ill. 233,) it was held that the "adjuncts of the subject are not required to be expressed or the *modus operandi*."

In *The Belleville &c. Railroad Co.* v. *Gregory*, 15 Ill. 20, (1853), and *Supervisors of Schuyler Co.* v. *People ex rel. R. I. & Alton R. R. Co.*, (1860), 25 Id. 121, it was held that a subscription to the stock of a railroad company by a municipal corporation was so far germane to the incorporation of the railroad as not to require specific mention in the title of an act providing for the incorporation of such road. But whatever may be said of the reasoning of those cases, the contention of plaintiff in error goes beyond it. If an incorporation of a railroad and a subscription to its stock are parts of the same subject, the incorporation of one road and the transfer to it of the stock authorized to be taken in another road are certainly not parts of the same subject, more particularly when the subscription to the stock of the latter depended upon and was based upon the vote of the people of the county. And this the Supreme Court decided in *The People ex rel.* v. *Hamil, supra.* It was also decided that the act of 1869 was not a private and local act. The court said:

"It is seen the act of March 10, 1869, to which reference is made as giving the requisite authority to the county to subscribe for the stock and issue the bonds, is 'An act to incorporate the St. Louis and Southeastern Railroad Company.' That is all it purports to be by its title. The constitution of 1848, under which this act was passed, contained a restriction that 'no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title.' This is a private or local act, and although the subscribing by counties, &c., to the capital stock of the corporation thereby created is germane to the object expressed in the title, (*Belleville &c. Railroad Co.* v. *Gregory*, 15 Ill. 20; *City of Virden* v. *Allan*, 107 Id. 505,) the diversion to that corporation of a subscription theretofore authorized by a vote of the people to be made to a different corporation is a wholly different thing. That, it is to be presumed, affects, adversely, the corporation from which the subscription voted is to be diverted, and is, therefore, clearly not germane to the title of the act, and section 20 must therefore be held to have been inhibited by the constitution of 1848, and is for that reason void and of no effect. (*Lockport* v. *Gaylord*, 61 Ill. 276; *Middleport* v. *Ætna Life Insurance Co.*, 82 Id. 562.)"

It was held in *The Belleville &c. Rd. Co.* v. *Gregory, supra*, that the provision of the constitution of that State could not be evaded by declaring a private act to be a public one.

From these views it follows that the bonds of plaintiff in error, having been illegally issued, do not constitute a contract which is protected by the Constitution of the United States.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.